

SUNSET REVIEW

OF THE

BOARD OF NURSING HOME ADMINISTRATORS

**SUBMITTED BY THE
COLORADO DEPARTMENT OF REGULATORY AGENCIES
JUNE 1992**

June 29, 1992

The Honorable Bob Schaffer
Joint Sunrise/Sunset Review Committee Chairman
Room 348, State Capitol Building
Denver, Colorado 80203

Dear Senator Schaffer:

We have completed our evaluation of the Colorado Board of Nursing Home Administrators and are pleased to submit this written report which will be the basis for my office's oral testimony before the Joint Legislative Sunrise/Sunset Review Committee. The report is submitted pursuant to section 24-34-104(8)(a), Colorado Revised Statutes, which states in part:

"The Department of Regulatory Agencies shall conduct an analysis and evaluation of the performance of each division, board, or agency or each function scheduled for termination under this section... The Department of Regulatory Agencies shall submit a report and such supporting materials as may be requested, to the Sunrise and Sunset Review Committee, created by joint rule of the Senate and House of Representatives, no later than July 1 of the year preceding the date established for termination..."

This report discusses the question of whether there is need for regulation of nursing home administrators provided pursuant to 12-39-101 et. seq. as amended. The report also discusses the effectiveness of the regulatory program in carrying out the intention of the statute and makes recommendations for statutory and administrative changes if the program is continued.

Sincerely,

Steven V. Berson
Executive Director

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EXECUTIVE SUMMARY

The Board of Examiners of Nursing Home Administrators was created in Colorado in 1969 in response to the 1967 amendments to the Social Security Act which obligated each state to have a licensure program in effect by July 1, 1970. This federal requirement remains in effect today. Sunsetting of this program would therefore jeopardize continued Medicaid/Medicare funding.

This board has an interesting history. In previous sunsets, there have been efforts made to move this Board to the Colorado Department of Health although the Board has remained with the Colorado Department of Regulatory Agencies. The statute has never been thoroughly revised since its inception in 1969, and is therefore antiquated.

The Board's performance and necessity have been questioned due to the insignificant number of disciplinary actions that have occurred during its history. The lack of clear communication with the Colorado Department of Health survey teams who provide evaluations of nursing homes and the lack of statutory power of the Board has weakened the Board's response to disciplinary issues.

To respond to federal mandates, the Board of Examiners of Nursing Home Administrators must continue. However, the Department of Regulatory Agencies recommends rather than continuing a dysfunctional system, a complete revision of the statute be performed and an organized communication system with the Colorado Department of Health be implemented.

With these needed tools to strengthen the Board's performance, it is recommended that this Board be revisited by the legislature in the near future to evaluate whether performance has improved and whether the Board plays a necessary role in the developing long term care industry in Colorado.

I. THE SUNSET PROCESS

The Nursing Home Administrator Board is scheduled to terminate on July 1, 1993 unless continued by the General Assembly pursuant to C.R.S. 24-34-104(22)(b)(II). During the year prior to that date, it is the responsibility of the Department of Regulatory Agencies to conduct a Sunset Review and Evaluation of the Nursing Home Administrator Board. During this review, the Board must demonstrate that there is a need for its continued existence and that the regulation it provides is the least restrictive consistent with the public interest. The Department's findings and recommendations are submitted via this report to the Joint Legislative Sunrise and Sunset Review Committee of the Colorado General Assembly. (Statutory criteria used in Sunset Reviews may be found in Appendix A of this report.)

This sunset review was comprehensive in nature. It included discussions with the Nursing Home Administrator (NHA) Board, program staff, the Colorado Department of Health, the Area Agency on Aging, the Colorado Gerontologic Society, the Colorado Health Care Association, the American Association of Retired Persons, the Office of the Colorado Attorney General and a variety of advocacy and consumer groups. A survey of selected ombudsmen from the state of Colorado was conducted. The laws of all fifty states were reviewed along with all federal regulations relating to the nursing home industry. Meetings with representatives of the Health Care Financing Administration were held to ensure a national perspective.

This Sunset Report is the third to be performed on the Nursing Home Administrator Board since its inception in 1969.

II. HISTORICAL PERSPECTIVE

In 1965, President Lyndon Johnson signed into law the Social Security Amendments which established the Medicare/Medicaid programs. This became the basis for the licensing of nursing home administrators. Medicare contained provisions for nursing home benefits for extended care and the Medicaid program broadened the scope of medical assistance that a state could make available to the poor and the medically needy.

It seems important to revisit the origins of the concept of licensing of nursing home administrators. The U.S. Senate Special Committee on Aging held hearings in 1964 and 1965 to review the current status of nursing homes in the United States. At that time it was determined that the level of care received within nursing homes ranged from excellent to poor. The committee's hearings revealed that states did not require a high level of care by law. The hearings also revealed the critical role a nursing home administrator plays in establishing a standard of care within a nursing home.

During this same time period, a number of studies were done that attempted to develop a profile of nursing home administrators and their qualifications. These studies indicated that there was no standardization of qualifications whatsoever in the field. Many members of the medical profession were concerned about the qualifications of nursing home operators. The studies indicated that nursing home administrators' qualifications ranged from no formal education to possibly a college education.

These concerns were addressed by Senator Edward Kennedy in the 1967 amendment to Title 19 of the Social Security Act. The amendment obligated a state to have a licensure program in effect by July 1, 1970. It also required the formation of state licensing agencies. The agencies were required to develop standards by which administrators would receive their licenses. The enforcement of these standards guaranteed that administrators were suitable, of good character, and qualified to perform their duties. State agencies were additionally required to develop and apply methods, through examinations and other investigations, to determine if individuals met their standards. After a determination that the standards were met, the agencies would issue licenses. The agencies would also investigate and act upon all complaints filed concerning administrators not complying with these standards.

In response to this federal initiative, each state created its own board. Although they are located in different agencies, the boards were all modeled after the federal regulations, many having a significant impact on the protection of residents (please see Appendix B). In 1969, Colorado responded by establishing the Board of Examiners of Nursing Home Administrators. Colorado law repeats the functions and duties as stated in the federal law almost verbatim. One noted difference is that federal law defines a nursing home administrator as one "charged with the general administration of a nursing home whether or not such individual has an ownership interest in such home and whether or not his functions and duties are shared with

one or more individuals." The Colorado definition fails to refer to any ownership interest. It states that a nursing home administrator is "any individual responsible for planning, organizing, directing, and controlling the operation of a nursing home, or who in fact performs such functions, whether or not such functions are shared by one or more other person."

The Board's federal and state mandates include the following: developing and enforcing standards, creating a licensing exam, investigating complaints, conducting disciplinary hearings, continuing study, and rule-making authority.

Previous Sunset Reviews: 1977 and 1982

The Board of Examiners of Nursing Home Administrators participated in sunset reviews in 1977 and 1982. In 1977, under the previous sunset law, the state auditor and the Department of Regulatory Agencies (DORA) both conducted an evaluation of this Board. Although DORA recommended the continuation of the Board to comply with the federal requirement, it found that the Board was part of a system of "hopeless organizational fragmentation." This finding was based on a review of the number of governmental entities providing oversight to the nursing home: the Colorado Department of Health, the Colorado Department of Social Services, the Colorado Board of Examiners of Nursing Home Administrators and the Colorado Attorney General's Medicaid Fraud Unit. In 1977, communication between all of these entities was less than adequate.

In 1977, DORA recommended that the NHA Board be made advisory and be transferred to the Department of Health or Social Services. The Department of Health was considered because of its nursing home licensure and patient care responsibilities. The Department of Social Services was also considered because of its nursing home management and finance responsibilities.

In addition to the advised transfer, DORA also recommended the following changes to strengthen the Board:

- Specify public protection in the legislative declaration;
- Increase educational requirements for the licensure of administrators;
- Institute an oral examination, in addition to the national test, focusing on state laws;
- Institute continuing education requirements;

- Provide closer supervision of the Administrator-in-Training program;
- Revise procedures for the issuance of a temporary license.

The state auditor concurred with these recommendations and also criticized the Board's processing of complaints and the lack of communication between the Board, the Colorado Department of Health and the Colorado Department of Social Services.

Of the changes recommended, at that time, new, temporary permit requirements were legislated. In addition, the Legislature added a broad declaration of legislative intent, adopted two years of college as the minimum education requirement and provided an exemption to the training requirements for persons with certain education credentials. This was the initial legislative effort to improve the standards previously established for nursing home administrators.

In 1979 and 1980, there were no legislative changes. In 1981, the legislature chose to amend the statute to: 1) permit the operation of a nursing home by a temporary permit holder; 2) broaden investigatory powers of the Board; and 3) enact new exemptions to the requirements of the Administrator-in-Training program and the temporary permit requirements. These needed changes were identified during the two years prior to legislative action.

The 1982 sunset review again recommended the continuation of the Board and the transfer of the Board to the Department of Health to decrease the fragmented oversight of nursing homes in the state. Industry opposition to this recommendation was strong and thus, the Board of Examiners of Nursing Home Administrators has remained in DORA's Division of Registrations.

Other recommendations that came from the 1982 sunset review, included the following:

- Clarify liability of owners relative to administrators;
- Resist mandatory continuing education requirements;
- Give the Board censure and reprimand powers;
- Increase the Attorney General's involvement with the Board;
- Convene a task force to consider regulation issues;
- Reduce the size of the Board from nine to five members.

The focus of the 1983 legislative session which considered continuation of this program was the location of the Board and thus little was done to implement other recommended changes.

In 1991, HB 1039 was introduced and ultimately enacted into law. This law revised C.R.S. 12-39-110 to redefine requirements for licensure by reciprocity. The new statute clarifies the applicant's responsibility in applying for licensure by reciprocity and facilitates the power of the Board to use its discretion in approving such licensure.

Since 1982, the Division of Registration's ability to regulate professions and the Department of Health's responsibilities to regulate facilities has been much more clearly established. There has been a continuing effort to improve communication between the various entities providing oversight. Yet, there continues to be a need for improved coordination between departments by a clear communication system effectively established and maintained. In evaluating the current system, a number of issues have been identified.

- * The Board of Nursing Home Administrators is seen by many professionals in this field as a gatekeeper that has little impact on the profession when responding to disciplinary concerns.
- * Many professionals believe the identified problems are not within an administrator's realm of control but are owner controlled issues.
- * The Board believes that the current statute weakens its ability to respond in that some standard powers given to a Board are not authorized.

In addition to these ongoing problems, the question arises "Why has the Board not taken active steps to gain the needed authority to provide the required oversight?".

The Board did spend a great deal of time and energy creating a new statute providing the needed powers to the Board. Yet, these recommended changes were not submitted to the legislature for approval. Why? Apparently the final federal regulations for nursing home administrators have been expected for over five years but have never been issued. There was a real concern that a new statute would be enacted and immediately new changes would be required to comply with federal regulations. Thus, the Board made the mistake of waiting for input from the federal government rather than acting independently to revise its statute based on identified needs within the State of Colorado.

Current Statutory System

Nursing Home Administrators are licensed pursuant to Section 12-39-101 et. seq. C.R.S. The legislative intent of this statute is to provide a measure of protection to the aged and handicapped residents of nursing homes in Colorado and to ensure quality administration and sound management of nursing homes.

Each nursing home in the state must have a licensed and registered nursing home administrator. The license can be a temporary one granted by the Board.

The Board is a nine-member Board. Three members must be licensed and practicing nursing home administrators; one must be an administrator of a nonprofit; one must be a licensed nursing home administrator who is practicing as a hospital administrator. Four members must have no direct financial interest in any nursing home and must have expertise in financial management and budgeting, health administration education, or geriatrics and medicine or a concern for the social and psychological welfare of patients and shall be chosen from other professions, agencies or institutions concerned with the care of chronically ill and infirm patients. One member shall be a member of the public at large. No more than two members of the Board can be officials or full time employees of state government. The Board is located in the Division of Registrations, Department of Regulatory Agencies, and is classified as a "Type 1" transfer, which means that the Board is administered under the direction and supervision of the Department of Regulatory Agencies but it exercises its statutory powers, such as rule-making, licensing and rendering of findings after a hearing, independent of department direction.

The Board's duties are to set standards for licensees, conduct licensing, issue licenses, register licensees each year, develop a statement of nursing home administrators' responsibilities and duties; conduct investigations and hold hearings, conduct a continuing study of administrators to improve the standards imposed for licensure, develop exams and establish fees. It must also ensure that a notice is posted at each nursing home to inform the public about the Board and the complaint procedure. The Board is authorized to promulgate rules as necessary to ensure compliance with Section 1908 of the Social Security Act.

To be admitted to the examination, an applicant must be 21, pay a fee and submit evidence of good moral character and suitability prescribed by the Board. In addition, the statute currently requires completion of two years of college level study, or, in lieu of these education requirements, proof that the applicant has two years of satisfactory, practical experience in nursing home administration or a related field. Each applicant, in addition to a national exam, must pass a Colorado exam designed to demonstrate proficiency in the practice and knowledge of health and safety in the state.

After an applicant has successfully complied with the licensing requirements, a license is issued. A conditional license for a period not to exceed 120 days may be issued by the Board to an applicant for reciprocity who has met all requirements but has not been approved by the Board.

Currently, every individual who holds a valid nursing home administrator license is immediately upon issuance of a certificate of registration deemed registered. Registration must be renewed on an annual basis. The terms "licensure" and "registration" are used interchangeably in the statute and this causes some confusion. Recommendation 2 includes language which will resolve this issue.

The Board may issue a temporary permit to a non-licensed applicant for a period not to exceed six months in an emergency situation. A hospital administrator can also be issued a temporary permit to exceed 12 months and is exempted from on-site supervision while meeting their administrator-in-training requirements.

Applicants are granted admission to the administrator-in-training program after complying with previously stated provisions. This program is a one-year training program that can be reduced up to six months at the Board's discretion based on the experience and training of the applicant. The administrator-in-training program does not apply to certain applicants who have a four-year degree in business administration, public health administration, or health administration, or who have an associate degree in a health-related field and at least two years of experience.

The Board may revoke or suspend licenses, or reprimand, or censure licensees. Statutory bases for discipline are a determination that licensees are unfit or incompetent, that they have violated the statute or acted inconsistently with the health and safety of the patients, or that they are guilty of fraud or deceit. The Board may conduct administrative hearings or refer cases to an administrative law judge.

It is a class 3 misdemeanor for any person to sell or fraudulently attempt to obtain a license, act as a nursing home administrator with a license fraudulently obtained, or practice as an administrator without a valid license. These violations are punishable by a fine of not more than \$500.00, imprisonment of not more than 90 days, or both.

The Board may ask for injunctive relief through the Attorney General if the District Attorney has not acted to pursue a complaint against an unlicensed nursing home administrator in a reasonable amount of time.

Under the last section of the statute, a person who is a nursing home administrator in a facility for people who rely on treatment by spiritual means alone through prayer in accordance with a religious creed are exempt from this statute.

III. SHOULD THIS OVERSIGHT CONTINUE?

Introduction

Long term care is of great importance to individuals, their families and state government. The expansion of the long term care industry has been noticeable during the last few years. This growth in demand will continue as the elderly population increases rapidly. In addition to increasing numbers of individuals aged 65 or older, healthier lifestyles and new advances in medical technology have extended the average life span, resulting in a growing population of people aged 85 and older. Along with these changes in demography, there is a substantial movement to contain costs by decreasing the length of hospital stays and dealing with less serious, acute care patients in nursing homes.

In Colorado, the General Assembly has responded to this growing need in a number of ways. In 1988, it passed legislation to create a Legislative Long Term Care Task Force. The established priority of this task force was the reorganization of the service delivery system for persons in need of long term care. There was clearly a need to better coordinate client services and make entry into the system more accessible for those in need. A significant outcome of this process is the 1990 legislation that created a single entry system for long term care in Colorado. This system will enable elderly persons in need of services to go to a single location to have all their needs coordinated rather than going from agency to agency attempting to identify appropriate services and attempting to coordinate them. This single access point will potentially make services more available to clients, decrease confusion, improve the allocation of resources and begin the process of creating a coordinated system. Additionally, the single entry system will provide some quality assurance monitoring procedures and sanctions focusing on service outcomes. ("Improving Client Access to Long Term Care in Colorado." Colorado Department of Social Services Report on Building Long Term Care Systems, November 30, 1990.) Although philosophically this newly created system is intended to improve services, there is some concern over whether this will be an effective means. In rural counties, clients will have to travel out of their counties at a greater distance to gain access to services. The positive outcome of this legislation is yet to be determined.

The process of establishing the single entry system is now in the beginning phases of implementation. The following chart gives an overview of the long term care industry and brings attention to the significance of the nursing home population in this state and the huge financial resources required to fund the nursing home population.

**Long Term Care Clients and Expenditures by Program
Fiscal Year 1990**

Program	Clients	Expenditures
Nursing Homes	15,590 (est)	\$152,202,009
Home & Community Based Services	3,816	12,653,286
Home Health 880	2,222,679	
Home Care Allowance	5,105	11,686,312
Adult Foster Care	395	830,738
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Older American's Act In-home Services (III-D)		
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Housekeeping	471 (est)	\$18,046
Personal Care	403 (est)	15,348
Chore Services	34 (est)	1,200
Telephone Reassurance	74 (est)	2,758
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TOTAL (Including estimates)	26,768	\$179,632,376

(Taken from "Improving Client Access to Long Term Care in Colorado" a Colorado Department of Social Services report on building a long term care system, November 30, 1990)

Projected changes in the elderly population of Colorado during the next five years must also be considered. Appendix C contains a series of projections by county of the number of elderly during a five year period. The overall figures indicate approximately an 8% increase of elderly in Colorado during the next five years. These percentages will continue to increase into the next century.

While considering the increasing importance of the long term care industry to the people of Colorado, one must understand some of the key players who provide oversight to the industry.

What is the Department of Health's Role?

The Health Facilities Division's function is to provide licensure, disciplinary action and enforcement. Surveys of all nursing home facilities licensed by the division are conducted on a yearly basis. To understand the recent reforms in this survey process that have been occurring during the past few years, one must understand the significance of the Omnibus Budget Reconciliation Act of 1987 (Obra). This powerful piece of federal legislation was designed to change the deplorable practices found in some nursing homes during the 1970's. This legislation was the most comprehensive change in nursing home requirements for participation in Medicaid/Medicare funding since the inception of these massive federal funding programs in the late 1960's.

Some of the nursing home amendments passed as part of OBRA, include the following:

- A. Comprehensive assessment of each resident;
- B. Residents' rights including the right to participate in decision making concerning health care;
- C. Prohibition against inappropriate restraint use;
- D. Training for nurse aides;
- E. New requirements for professional nursing staffs;
- F. Better and stronger surveys.

The goal of the survey process in evaluating compliance or noncompliance with the OBRA reform requirements is to improve quality of care by making the outcome of the process more resident oriented and more accurate.

Surveyors are asked to determine whether a resident has received "...the necessary care and services to attain or maintain his/her physical, mental, and psychosocial well being..." ("Moving Ahead with the Challenge: Making Sense of OBRA," Provider, March 1990). The entire survey process has become focused on the outcome of care rather than focusing on the factors identifying the nursing homes' capacity to give care. This new process is in its early developmental stages. The outcome of care orientation seems logical although extensive research on the normal aging process is needed to quantify the aging process more effectively so that it is considered in evaluating outcome. The intent of this newly developed process is to establish a better tool to evaluate nursing homes and create a more effective system of feedback and improvement.

The following chart provides a summary of complaints received by the Department of Health during a one year period and all actions taken:

**DEPARTMENT OF HEALTH NURSING HOME COMPLAINT HISTORY
October 1, 1990 - November 5, 1991**

- **213 long term care facilities**
- **493 complaints from facilities**
- **220 anonymous complaints**
- **123 facilities complained against**
- **Complaints assigned for investigation: 484**
- **1,318 total allegations (see below)**

Complaint Category	# of Allegations	# of Valid Allegations	# of Deficiencies issued
Patient Care	548	62	52
Patient Rights	144	18	14
Patient Abuse	71	5	6
Patient Neglect	10	1	1
Environment	185	44	31
Food & Dietary	77	4	4
Staffing	165	27	21
Administrative	99	9	3
Total Complaints/ Actions	1318	172	132

In addition to the above-noted complaints, problem areas were identified during the survey process itself. This data is provided to ensure that the General Assembly is aware of the long term care industry and the problems that arise in that area. As indicated, sanctions against homes occurred in response to 132 proven allegations.

It should also be noted that 42 USC 1396r(5c) of the federal regulations, specifically requires that if a state finds that a nursing facility has provided a substandard quality of care, the state shall notify not only the attending physician, but also the nursing home administrator board. This practice has not been consistently followed and must be reformed so that the Board is informed of all administrators who are responsible for facilities providing substandard care. A revised system will be described fully in the recommendation section of this report.

What is the Ombudsman's Role?

Another important watchdog of the nursing home industry is the state ombudsman program which was created in response to a federal mandate.

The Long Term Care Ombudsman program began as a demonstration project in five states in 1972 as part of a federal initiative to improve the quality of care in nursing facilities. The ombudsman was an individual outside of the nursing home itself who was expected to identify and work to resolve complaints.

In 1978, an amendment to the Older Americans Act mandated that each state establish and operate a statewide Long Term Care Ombudsman program. The Colorado Long Term Care Ombudsman program is administered by The Legal Center through a contract with the Department of Social Services. There are ombudsmen throughout the state, often found in Area Agencies on Aging. The ombudsmen attempt to visit nursing homes on an ongoing basis, identify complaints, attempt to resolve the complaints and refer to governmental agencies when additional intervention is needed. These programs have a great deal of volunteer involvement after training has been provided.

Appendix D is a computerized report of all complaints that Colorado ombudsmen received during federal fiscal year 1991. In reviewing this data, it should be noted that 4558 complaints were received concerning nursing home facilities. Of these complaints, a significant majority were resolved through communication with the nursing homes themselves while a small percentage were referred to appropriate oversight agencies for further action.

A survey of key ombudsmen throughout the state for purposes of this sunset review indicates that the ombudsmen are unaware of the role of the Nursing Home Administrator Board or its intended role in the long term care industry.

What is the Nursing Home Administrator Board's Role?

The Board of Examiners of Nursing Home Administrators has been in existence since 1969. The profession currently consists of approximately 470 licensed administrators, from which many of the 200 nursing homes draw their leadership. Out of state recruitment also occurs to fill these positions. Many of those licensed as an administrator work in other related areas. There are nine board members supported by 20% of a full time administrator and 50% of a full time secretary.

The nine board members carefully review applications for licensure and approve Administrator-in-Training program applicants. The chart below indicates actions taken by the Board during the past four years:

ACTIONS TAKEN BY NURSING HOME ADMINISTRATORS BOARD 1987-1991	
Applications for examination approved	130
Exam applications denied	14
Exam passed, license issued	172
Exam failures	57
Reciprocity approved	65
Reciprocity denied	15
Admitted to Administrator-in-Training	0
12 month program	17
AIT partial program waivers granted	32
AIT program waivers denied	6
Admission to AIT program denied	6
Temporary/Emergency Permits granted	18
Temporary/Emergency Permits denied	4
(Note: numbers do not total correctly because there are various influences on totals indicated. For example, the number of licenses issued includes participants in the AIT program and applicants who are issued licensed by reciprocity.)	

COMPLAINTS	
Complaint dismissed	130
Letters of Reprimand issued	2
Monitor Reports initiated	1
Stipulations issued	3
License revoked	1
(Note: All investigations are not yet completed.)	

This chart reflects that the Nursing Home Administrator (NHA) Board has primarily functioned as a gatekeeper into the profession. As evidenced above, the board has taken little disciplinary action against any administrator. In the past four years there have been only three stipulations issued and one license revoked. Its disciplinary activity has been seriously affected by its limited statutory authority to discipline. Board members also express concern about the inconsistent communication with the Health Facilities Division of the Department of Health. Because the Complaints and Investigations Section of the Division of Registrations has difficulty responding to complaints quickly due to staffing shortages, and because the Colorado Department of Health is responsible for the investigation of all nursing home complaints within a mandated time period, the board often refers complaints to investigators at the Department of Health. Feedback from the Department of Health on actions taken is inconsistent and the board is often unaware of problem nursing homes and actions taken against them. The problem can be considered twofold: 1) The staff of the Health Facilities Division is inconsistent in relaying information to the Board of Examiners of Nursing Home Administrators. 2) Since survey results are available, the Board has not made the necessary effort to access this information by checking survey results. This process would require staff time to go to the Department of Health offices and review survey results on their computer and develop computer access through a modem. Computer access has been available for only a brief period of time and manually reviewing surveys in the past was impractical in terms of time involved.

Internship Requirements

Another area of review is the Administrator-in-Training (AIT) program. The purpose of this program is to provide a learning opportunity for future administrators in a nursing home setting through a supervised internship program. A significant number of hours of training is required by participants and regular reports must be submitted to the Board. Yet there is no direct oversight by the NHA Board to ensure that participants are actually performing the tasks indicated in their applications or whether the preceptor of the program provides any actual

supervision. Several administrators have indicated that their experience was a "sham" and had little value in learning the responsibilities of the administrator. Preceptors who do supervise program participants find it extremely difficult to provide a learning environment if the participant is working full-time in another capacity.

Since it is expected that federal regulations will increase the current Administrator-in-Training requirements, the board must carefully consider the goal of this program. More intense oversight must be provided and a more significant commitment on the part of program participants must be demanded. A full-time commitment to this learning experience would produce a better outcome. Many other professions require internships as part of the educational experience. The Board should work closely with educational institutions in Colorado to build this requirement into the actual curricula that prepare individuals to be administrators so that the number of AIT participants under board supervision will decrease as supervision is provided through the educational process. The Board is aware of the need to strengthen the monitoring mechanism for this program and has begun a process of evaluation and revision of this program's structure.

Educational Requirements

Another area that is expected to be strengthened by federal requirements is in the area of mandatory continuing education. Although the Department of Regulatory Agencies has philosophically opposed mandatory continuing education requirements based on studies that indicate no direct relationship between mandatory continuing education requirements and actual improved performance and the belief that requiring continuing education is not an appropriate governmental function, the new regulations are expected to require 20 hours of continuing education per year. The new statute and sunset bill will, therefore, provide a vehicle for establishing this requirement in Colorado. In several states, the NHA Board has begun approving continuing education programs to ensure a high quality of programs and also to enable the Board to charge an approval fee to increase their funding base. The Colorado Board will need to evaluate this option as it determines the fiscal impact of expanding its role.

State Testing

Another area that has needed revision is the state test currently offered by the Board. The current testing requirements to become a nursing home administrator include passing a national test and also passing the state test which focuses on Colorado Department of Health regulations. The state test now asks such generalized questions that a true test of knowledge of Colorado regulations does not occur. The Board, however, has been

engaged in analysis over the past year with the Division of Registrations' psychometrician to develop new questions which are more conducive to measuring knowledge of Colorado law. This process is in the final stages of completion and will be implemented by fall of 1992.

Owner Oversight

An additional area of concern expressed by the Board and some administrators is the lack of oversight available for owners of facilities. The Department of Health is currently required to review each owner's fitness and is required to determine by on-site inspections or other appropriate investigations whether owners are in compliance with applicable statutes and regulations.

The outcome of these investigations can result in a refusal to renew a license. A system exists to deal with owners who are offering substandard care. Creating a new system would be unnecessary and duplicative. The Colorado Department of Health's authority in this area must be more effectively used to provide the needed oversight of owners. To do this, problems with owners must be reported to the Colorado Health Department for investigation and possible action.

Conclusion

The current weakness of the Board has a historical aspect. For example, in the early 1970's, during the initial phase of the Board's existence, the Health Facilities Division provided copies of all their surveys to the Board. Because there seemed to be little response to this information, Health Facilities stopped this practice, making information sharing inconsistent or nonexistent since that time.

Another situation that has had an impact on this Board is the struggle during both prior sunset reviews over where this Board should be located in the Colorado Department of Health or in the Department of Regulatory Agencies. This issue became so controversial that other weaknesses in the Board's authority were not resolved. As indicated previously, the Board realized the weaknesses in its statute in 1987 and completely rewrote the statute. This document has been carefully reviewed for purposes of this sunset. Because the new federal regulations were expected to be released during that year, it was decided to wait for the federal regulations to ensure that the state law complied. Again, the mistake on the part of the Board was to assume timeliness on the part of the federal system.

The Board's performance has been affected by its history. Notwithstanding this reality, the Board must take a more aggressive stance in educating agencies involved in the long term care industry of their role, become more involved in the long term care system plans of the Colorado Department of Social Services and, as new authority is provided, take clear, effective

action to prevent incompetent administrators from continuing to provide substandard care. The challenge is great and the legislature must look critically at the Board's accomplishments during the next several years to ensure that the legislative intent is being met. Whether the Board's existence is of significant continuing importance to the long term care system being developed in Colorado will need to be reviewed in the near term in the context of the reforms proposed in this report.

Should the Board of Examiners of Nursing Home Administrators Continue?

The profession of Nursing Home Administrator has changed drastically in the last 20 years. With the huge increase in federal requirements mandated by the Social Security Act of 1967 and with further requirements mandated by OBRA 87, a nursing home is under close scrutiny by a number of regulatory bodies. The administrator must be well versed in both federal and state requirements and must also manage the financial resources of the home to ultimately show a profitable outcome to the owners. The challenge is great while the resources are often limited.

A recent study published in the June 1992 issue of Gerontologist entitled "Ineffective Staff, Ineffective Supervision or Ineffective Administration? Why Some Nursing Homes Fail to Provide Adequate Care" supports Senator Ted Kennedy's belief that the management system is the root cause of poor quality. This problem of poor management in nursing homes was the primary factor contributing to the licensure requirements being mandated by federal law.

The study concluded that it is unlikely that regulatory actions against nursing home facilities themselves can assure a high quality of nursing home care. The key to improved quality of care is the nursing home administrator's commitment to building an organizational climate that enhances the care providers' sense of self worth and reinforces leadership effectiveness. This climate focuses on a strong human relations and task orientation.

Notwithstanding the fact that this is a heavily regulated industry and the Board's performance has been questionable, state regulation of nursing home administrators is specifically mandated by the federal government in the Social Security Act of 1967. During this evaluation process, the potential for recommending a waiver of the mandated requirement for a nursing home administrator was considered. The federal response to this consideration was quite concise: There is no authority to grant such a waiver. Thus, if the current licensing program were sunsetted, loss of the federal Medicaid funds would become a reality. This loss would also impact on poor children and persons with disabilities in Colorado being able to afford necessary medical care.

The federal mandate requiring a licensing board for nursing home administrators has been in a state of flux for a number of years. Before adjourning in 1990, Congress repealed the sections of the Social Security Act passed in 1967 which require a state program for the licensing of administrators of nursing homes. The repeal is "effective on the date on which the Secretary promulgates standards regarding the qualifications of nursing home administrators."

It is important to note that these particular standards have been in the drafting stage for a number of years. HCFA did release proposed regulations in December of 1991. Upon questioning, HCFA reports that the issuance of the final regulations could take years due to the controversies that have arisen. In addition, lobbying efforts to maintain the requirement that each state have a board are ongoing.

The proposed regulations released in December of 1991, contained the following elements:

- A bachelor's degree is required;
- Continuing education is required;
- National and state examinations are required;
- An internship or Administration in-training program is required;
- A basis for grandfathering current licensees is required.

There is a great concern that complying with these standards through a federal process will have a high potential for inconsistency. This concern stems from plans to give state surveyors (state employees who evaluate nursing homes according to federal requirements) the authority to determine whether or not the administrator meets standards under the new system. If, however, a state licensing program exists and has equal or better standards, then proof of state licensure would lift the burden of evaluating credentials from surveyors and maintain them in one entity--the Nursing Home Administrator (NHA) Board.

Despite the expected repeal of the law at some time in the future, there are services that will continue to be needed under state direction. These include:

- Examination administration;
- Administrator-in-Training program administration;
- Complaint recording and investigation;
- Actions against administrators providing substandard care; and

-- Rule making.

It is currently unclear exactly how, without a board, these functions would be provided by the state to comply with federal regulations.

Rather than continuing a dysfunctional bureaucratic system, the system should be revised to provide the oversight intended by the legislature to thus improve the quality of care through improved administrator performance.

The following recommendations will strengthen the Nursing Home Administrator Board through an expansion of the Board's authority and improved communications. This will give the Board the tools necessary to provide mandated oversight and impact on the effectiveness of the long term care industry in Colorado.

IV. RECOMMENDATIONS

RECOMMENDATION 1: CONTINUE THE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS.

The General Assembly should continue the Board of Examiners of Nursing Home Administrators.

The General Assembly is in an unusual position relating to its decision concerning this Board. At this time, the Board must continue to ensure ongoing availability of federal funds. As indicated in this report, the intent of the legislature in enacting this statute was to ensure some protection to those in nursing homes. This opportunity will also enable the Long Term Care System in Colorado, including the single entry system, to be implemented with time to evaluate the actual effect of this system in providing oversight to the long term care industry. Five years from now, the General Assembly can reevaluate the long term care system in Colorado and the Nursing Home Administrator Board's performance under its new statute. The decision to continue or not to continue the Board will be up to the General Assembly rather than mandated by federal law if the proposed legislation is finalized. Of course, this is assuming that the federal regulations relating to nursing home administrators have in actuality been finalized and published.

Findings have identified weaknesses in the Board's performance including: difficulty identifying problem nursing homes and thereby identifying problem administrators; an inability to track administrators from facility to facility; lack of action to increase regulatory authority needed to provide oversight and a willingness to "wait and see" what our federal government does rather than acting independently to protect the people of the state. The role of the Board can be strengthened by a strong commitment by the Board to seek out needed information and to effectively use newly granted powers to meet the legislative intent.

RECOMMENDATION 2: REPEAL CURRENT STATUTE AND ENACT A REVISED STATUTE.

(Please see Appendix E for revised statute.)

The statute authorizing the Board of Examiners of Nursing Home Administrators is antiquated and has not been thoroughly revised since its enactment in 1968. The Board does not have the authority to provide oversight or discipline that is common to other boards in the State of Colorado. Not only the Board, but also the Assistant Attorney General who has worked with this, believe that the statute has limited the board's ability

to accomplish the intent of the legislature. To rewrite this statute is the most effective means of correcting the poor structure and limited authority in effect under the existing statute. The statute should be reenacted with the following section titles:

- 12-39-101. Legislative Declaration.
- 12-39-102. Administrator license required.
- 12-39-103. Definitions.
- 12-39-104. Board of examiners of nursing home administrators -subject to termination - repeal of article.
- 12-39-105. Duties of the board.
- 12-39-106. Qualifications for admission to examination.
- 12-39-107. Administrator-in-Training.
- 12-39-108. Examination.
- 12-39-109. Reciprocity.
- 12-39-110. License.
- 12-39-111. Inactive Licenses.
- 12-39-112. Grounds for Discipline.
- 12-39-113. Penalties.
- 12-39-114. Withholding or Denial of License - Hearing.
- 12-39-115. Mental and Physical Examination of Licensees.
- 12-39-116. Disciplinary Proceedings - Hearing Officers - Judicial Review.
- 12-39-117. Advisory Committee.
- 12-39-118. Unlawful Practices.
- 12-39-119. Injunctive Proceedings.
- 12-39-120. Rule-Making Authority Granted.
- 12-39-121. Attorney General Shall Represent Board and Members.
- 12-39-122. Nursing home administrators of church or religious denomination - exempt.

The following list will focus on some of the more glaring problems and the rationale for the new statute:

2A. Current: The terms "licensure, certification, and registration" are all used to describe this program. Additionally, the statute is badly organized and difficult to follow.

Recommended: Rewrite to organize the statute more efficiently and focus on the fact that this is a licensure program.

The statute currently requires licensure and registration and uses certification to describe the process. In addition, the statute now has section headings that have very little relationship to the actual content of the section. This revision would enable the General Assembly to make the statute more clear.

2B. Current: Nine-member board.

Recommended: Seven-member board.

The current number of licensed administrators in Colorado is approximately 470 people. The Division of Registrations has found that a seven-member board is more manageable and efficient. This is one of the larger boards within the Division of Registrations. Normally, a large board is required when there are a number of differing interests within the profession being regulated. This is not the case here. This would also decrease expenses for Board support and increase funding available for other Board functions such as increased oversight of Administrator-in-Training Program participants.

2C. Current: The statute currently gives the governor the authority to remove board members for cause.

Recommended: The statute needs to establish with greater specificity what "for cause" means.

This addition should include negligence, incompetence, unprofessional conduct or willful misconduct. It has become important for professional regulatory statutes to clearly define reasons for a board member's dismissal so that board members may have clear expectations in this regard. The language recommended is the standard in the State of Colorado.

2D. Current: There is no requirement that an administrator must inform the Board of any change in his/her employment, or if the administrator is the subject of a law suit.

Recommended: Administrators should be required to report what facility they are responsible for so that problem nursing homes can be easily linked to the leadership of such a facility. In addition, all pending law suits should be reported to keep the board fully informed of the need for potential investigations.

Administrators currently inform the Department of Health of any change of status so that they know who is the administrator of each facility but the Board does not receive the same information and has not been able to easily access this information.

2E. Current: The disciplinary proceedings section is antiquated, sometimes vague and does not cover the following areas: addiction to alcohol or drugs, mental or physical disability, felony convictions, loss of license in another state, lack of attendance at meetings or evidence of consistently poor performance. This section also authorizes only revocation and suspension of a license and does not authorize probation or letters of admonition.

Recommended: Update section to include grounds for discipline that are standardized

for boards.

This entire section needs to be updated. As an example of vagueness, the current statute lists the following as a reason to revoke or suspend a license:

"(a) Upon proof that such licensee is unfit or incompetent by reason of negligence, habits, or other causes..."

The Department of Regulatory Agencies believes that using "habits" or "other causes" as a basis for revocation would be considered unconstitutionally vague. The need for specificity when attempting to revoke or suspend a license must be clear. Additionally, the current statute offers no choices other than revocation for a violation of the statute such as probation or a letter of admonition placed in the administrator's record. This revision will conform this statute with the current standards relating to disciplinary proceedings as established in professional regulatory bodies in the State of Colorado.

2F. Current: For admission to a licensing examination, an applicant must show two years of college education.

Recommended: The educational standard to be admitted to an exam for a nursing home administrator license should be increased to a four year degree in the areas of health and administration.

Nursing homes have become much more complicated in recent years and the need for a higher educational standard has been recognized by the federal government as indicated in the proposed regulations. With the required compliance with a myriad of federal regulations and the complicated funding mechanisms used to support these nursing homes, the need for more highly trained individuals is apparent. In reviewing recent applications for licensure, a vast majority of those applying hold four year degrees indicating that changing educational requirements will not have a significant impact on potential administrators. Employers often choose the most qualified individuals and salaries often reflect this choice so the actual impact on health care costs would be minimal.

2G. Current: The Board currently provides a review of written materials with no direct oversight of participants in the Administrator-in-Training Program.

Recommended: The Board should be authorized to provide on-site visits to the nursing homes to review compliance with Administrator-in-Training Program goals and objectives as established by participants and administrators providing oversight.

Based on interviews with past program participants the actual experience often does not conform to the written material. This recommendation would better ensure that participants and administrators are complying with the stated objectives of the participant's program.

- 2H. Current: To get an injunction against an administrator, one must first request enforcement through the district attorney and wait a reasonable period of time prior to requesting the attorney general to take action.

Recommended: The Board should be authorized to request immediate injunctive relief through the attorney general's or the district attorney's office.

The current authority to request injunctive relief is too vague and requires an additional step (that of requesting district attorney action) while the Board has an attorney general assigned to it for assistance who could take action more quickly and efficiently. This will authorize the Board to act more quickly when public safety is at risk.

- 2I. Current: The Board has no authority to establish what "full-time" means and how "adequate supervisor" is defined.

Recommended: The Board should be authorized to define "full-time" and what "adequate supervision" means through the rule-making process.

At this time, there are no standards for the amount of time an administrator is actually present in a nursing home for which he/she is responsible for oversight. Thus, one administrator could be the administrator for any number of nursing homes at the same time. To provide adequate administration, there is a need to be on site on a regular basis.

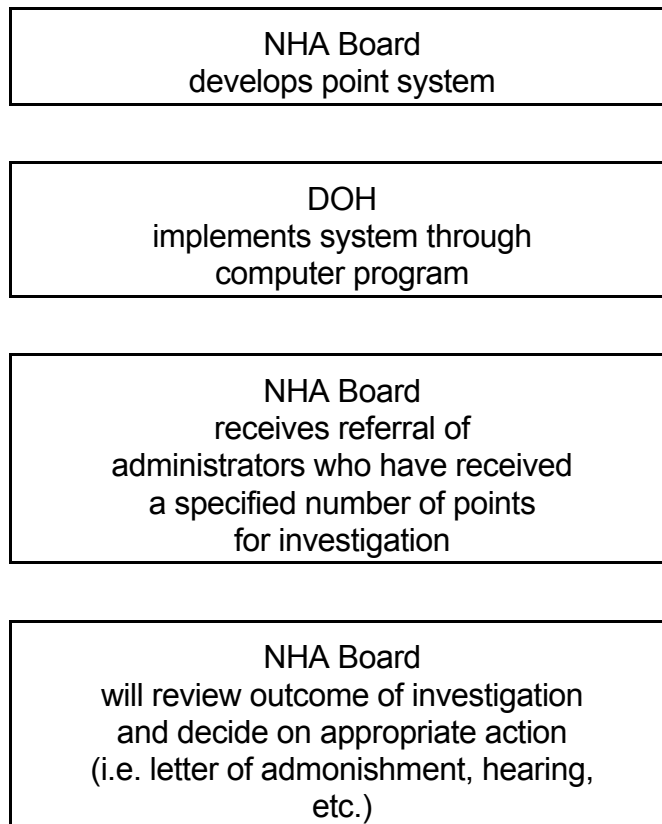
- 2J. Current: Under Grounds for Discipline, it is required that an administrator be found willfully and negligently acting in violation of the statutes. This places a much greater burden on the Board in proving its case because willfulness and negligence are difficult to prove.

Recommended: Remove the requirement to prove willfulness and negligence in the administrator's actions before a disciplinary action can occur. This change has been recommended in other statutes to update the standards for discipline.

RECOMMENDATION 3: CREATION OF A COMMUNICATION SYSTEM BETWEEN AGENCIES.

The Health Facilities Division of the Colorado Department of Health and the Nursing Home Administrator Board should create a standardized procedure for communication concerning survey results and their relationship to administrator performance.

The following system is recommended and associated statutory language has been suggested. Computer programmers at the Department of Health indicate that this process can be easily programmed into the existing survey system with the ability to generate monthly or bi-monthly reports.



The survey process currently implemented by the Department of Health potentially identifies several hundred specific areas based on federal requirements that a survey team will evaluate during on-site visits. The extensiveness of each survey is decided on the basis of an evaluation of patient outcome. In other words, if no problems are identified in the nursing home, a less extensive survey would be performed. The areas (tag lines)

surveyed range from areas such as peeling paint or flatware placed upside down in the dishwasher to patient abuse. A scope and severity rating is then assigned based on the number of residents who are impacted by the problem and the seriousness of the problem.

Under the proposed system, the Board will identify the scope and severity of the problems in a given nursing home through a weighting system attached to the survey tags. This will enable the Board to track administrators who consistently administer nursing homes with a significant number of deficiencies. Points will be associated with quality of care factors which will focus on the following areas: patient care; environment; patient rights; food and dietary; staffing; patient neglect/abuse; administrative; and requests for assistance. Next, the Board will establish a certain point requirement that would then indicate the need to refer an administrator for investigation by the NHA Board. All due process requirements under the Administrative Procedure Act will be followed.

This will be the genesis of several positive results: 1) the ability to track a "bad" administrator from facility to facility; 2) the ability to identify administrators whose facilities are below the established standard of care; 3) the ability to establish a passive method of referral through a computer database rather than depending on active behavior by staff from any agency; and 4) the ability to establish specific minimum competency standards for administrators.

Currently, there is no established system of communication which allows this board to receive needed information to identify complaints and investigate administrators who are consistently providing substandard care. The actual process of reviewing survey results by the Board would be extremely time consuming and not a good use of limited resources. Statutory change will ensure that administrators will have an opportunity to respond and will also ensure that administrators who take over a troubled facility will not be unjustly disciplined for the practices of a prior administrator.

The Department of Regulatory Agencies believes that without such a formalized system and with the anticipated growth of nursing facilities in Colorado, it will become increasingly difficult to identify problem administrators who may move from facility to facility.

RECOMMENDATION 4: NEGOTIATE A MEMORANDUM OF UNDERSTANDING BETWEEN THE NURSING HOME ADMINISTRATOR BOARD AND THE COLORADO DEPARTMENT OF HEALTH AND THE OMBUDSMAN PROGRAM.

The Nursing Home Administrator Board should develop Memorandum of Understanding with the Colorado Department of Health and the Colorado Ombudsman Program regarding guidelines for referral of nursing home administrators for investigation and disciplinary proceedings.

As documented earlier, the Colorado Department of Health , Health Facilities Division and the Colorado Ombudsman Program deal with a significantly higher number of complaints against nursing homes than does the NHA Board. It is of critical importance that the Board clearly establish guidelines for referral of nursing home administrators to the Board for evaluation of the need for investigation. Until this information is readily available, the Board's ability to react effectively will be hindered.

RECOMMENDATION 5: INCREASE NURSING HOME ADMINISTRATOR BOARD FUNDING.

The General Assembly should include an appropriation clause to ensure that there are increased appropriations cash-funded by the profession.

With the increased authority and improved communication system, this board will need to evaluate its current fees and increase them accordingly. Currently, the yearly renewal fee is \$100.00 with an additional \$9.00 charged per licensee which is transferred to the General Fund. This license fee is lower than the national average. To effectively implement program recommendations, it can be anticipated that additional board meetings will be required and additional travel expenses will be needed.

RECOMMENDATION 6: ESTABLISH A REVIEW UPON ISSUANCE OF FINAL REGULATIONS.

The General Assembly should add the following section:

12-39-119 The Director of the Division of Registrations shall notify the Sunrise/Sunset Committee of the Legislature at the point in time when final regulations are issued or after Congress

repeals state requirements for a state board for the oversight of Nursing Home Administrators as provided in the Social Security Act of 1967 as from time to time is amended, to establish a sunset date.

As previously mentioned, the Nursing Home Administrator Board is currently mandated in the Social Security Act of 1967. Although federal requirements for nursing home administrators are expected to be strengthened, the section of the Social Security Act requiring that a board exist is expected to be repealed. This recommendation will enable this Board to be evaluated for continuation at the point in time when the Legislature will have a choice. The Sunset Review will enable a thorough evaluation of board performance to occur.

RECOMMENDATION 7: PROMULGATE REGULATIONS CONCERNING TEMPORARY LICENSURE THAT WILL ENSURE THAT QUALIFIED INDIVIDUALS HAVE THE ABILITY TO GET A TEMPORARY LICENSE IMMEDIATELY IN AN EMERGENCY SITUATION.

The Board of Examiners of Nursing Home Administrators should promulgate regulations enabling an immediate response to a request for a temporary license to practice as a nursing home administrator.

Discussion: There are situations that arise in which a new administrator needs to be licensed on an emergency basis for a temporary period of time. If a person has all required qualifications but is not licensed there should be a method of issuing a temporary license through the Director of the Division of Registrations rather than the need for Board approval. The Colorado Department of Health expresses concern that a situation can arise in which a new administrator is needed within a twenty-four hour period. (For example, in the case in which a receiver must be appointed and a court hearing is set within a twenty-four hour period. This would enable a temporary resolution to occur quickly to ensure that there is the needed management of the nursing home on an ongoing basis.

RECOMMENDATION 8: RECORDKEEPING

The Board should keep formal records of complaints and final disposition of those complaints.

Currently, after the Board has responded to complaints, the records are placed in each licensee's file. To make this information more easily available for review, a tracking system should be implemented.

APPENDIX A

Sunset Statutory Evaluation Criteria

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulations;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices of the Department of Regulatory Agencies and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.

APPENDIX B

**National Association of Boards of Examiners
for Nursing Home Administrators**

**Licensure Information by State
(Compiled from 1990/91 Statistics)**

STATE	LICENSURE REQUIREMENTS		AIT TRAINING		EXAMINATION		CE Hours	
	Education	Renewal	Period	*Cert.	National	State	Required	
Alabama	HS		Yearly	None	----	Yes	Yes	24/year
Alaska	BA/BS		Every 2 years	None	----	Yes	No	None
Arizona	AA w/courses		Every 2 years	None	----	Yes	Yes	50/2 years
Arkansas	AA or HS & exp.	Yearly	1 Year	No		Yes	Yes	20/year
California	AA & AIT	Every 2 years	1000 hours	Yes	Yes	Yes		40/2 years
Colorado	BA/BS or AA & 2 years	Yearly	6-12 months	No		Yes	Yes	None
Connecticut	BA/BS/MS & courses	Yearly	500-900 hours	No		Yes	Yes	None
Delaware	AA & NHA courses	Every 2 years	3-12 months	No	Yes	No		48/2 years
DC	BA/BS & courses		Every 2 years	1 year	----		Yes	Yes 20/year
Florida	AA w/courses & exp.	Every 2 years	1 year	Yes		Yes	Yes	40/2 years
Georgia	BA/BS w/2 years exp.	Every 2 years	6 months	Yes	Yes	Yes		40/2 years
Hawaii	BA/BS w/2 years exp.	Every 2 years	1 year	No		Yes	Yes	None
Idaho	BA/BS, courses & exp.	Yearly	1 year	Yes		Yes	Yes	20/year
Illinois	AA, courses & exp.	Every 2 years	None	----		Yes	Yes	36/2 years
Indiana	AA & LTC courses	Every 2 years	6-9 months	Yes		Yes	Yes	40/2 years
Iowa	AA LTC or equivalent	Every 2 years	720 hours	No	Yes	Yes		36/2 years
Kansas	BA/BS & 480 hr. practical		Every 2 years	None	Yes		Yes	Yes 60/2 years
Kentucky	BA/BS & 6 months exp.	Every 2 years	None	----		Yes	No	30/2 years
Louisiana	AA & exp. or AIT	Every 2 years	6 months	Yes	Yes	Yes		30/2 years
Maine	BA/BS		Yearly	6 months	No	Yes	Yes	24/year
Maryland	BA/BS, courses & exp.	Every 2 years	1 year	Yes	Yes	Yes		30/2 years
Massachusetts	BA/BS		Yearly	6 months	No	Yes	No	30/2 years
Michigan	BA/BS/RN, course, exp.	Every 2 years	None	----		Yes	Yes	36/2 years
Minnesota	BA/BS w/courses	Yearly	4-500 hours	No		Yes	Yes	40/2 years
Mississippi	AA w/courses, year exp.	Every 2 years	6 months	Yes		Yes	Yes	40/2 years
Missouri	Education & experience	Yearly	300 hours	Yes		Yes	Yes	20/year
Montana	AA w/experience		Yearly	None	----		Yes	Yes 25/year
Nebraska	AA w/NHA courses & AIT	Yearly	960 hours	Yes	Yes	Yes		50/2 years
Nevada	HS & 1 year experience		Every 2 years	None	----		Yes	No 20/2 years
New Hampshire	BA/BS/NHA & 1 year exp.		Every 2 years	1 year	No		Yes	Yes 25/2 years
New Jersey	BA/BS & experience	Every 2 years	1 year	No		Yes	No	40/2 years
New Mexico	BA/BS or hospital exp.	Yearly	None	----		Yes	No	24/year
New York	BA/BS, course and exp.	Every 2 years	9 months	Yes	Yes	No		72/2 years
North Carolina	2 year college & courses		Every 2 years	15-50 weeks	Yes		Yes	Yes 30/2 years
North Dakota	AA		Yearly	None	----		Yes	Yes 25/year
Ohio	BA/BS, courses & exp.	Yearly	3-9 months	No		Yes	Yes	20/year
Oklahoma	HS/60 hours NHA	Yearly	None	----		Yes	Yes	24/year
Oregon	BA/BS		Yearly	960 hours	Yes		Yes	Yes 30/year
Pennsylvania	AA, courses & exp.	Every 2 years	None	----		Yes	Yes	48/2 years
Rhode Island	BA/BS, courses and exp.	Yearly	None	----			Yes	No None
South Carolina	BA/BS & 2 years exp.	Every 2 years	None	----		Yes	Yes	40/2 years
South Dakota	AA & courses	Yearly	6 months	Yes		Yes	Yes	20/year
Tennessee	BA/BS HCA or pub. admin.		Every 2 years	6-12 months	Yes		Yes	Yes 18/year

Texas	BA/BS	Every 2 years	520 hours	Yes	No	Yes	24/2 years
Utah	BA/BS in HCA	Every 2 years	300 hours	Yes	Yes	No	40/2 years
Vermont	AA or experience	Every 2 years	None	----	Yes	Yes	None
Virginia	BA/BS plus AIT	Yearly	2080 hours	Yes	Yes	Yes	20/year
Washington	AA and/or experience	Yearly	None	----	Yes	Yes	54/3 years
West Virginia	BA/BS in HCA & exp.	Yearly	1 year	Yes	Yes	Yes	30/year
Wisconsin	HS LTC courses & exp.	Every 2 years	None	----	Yes	Yes	24/2 years
Wyoming	AA & 6 months exp.	Yearly	6 months	No	Yes	Yes	50/2 years

Are AIT Preceptors certified by the Board

APPENDIX C

Projections of the 60+ Population in Colorado

1990-1995

1990 Based Economic - Demographic Projections								Average Annual Percent Change
Region	County	1990*	1991	1992	1993	1994	1995	
1	Logan	3609	3615	3617	3616	3611	3604	-0.03%
1	Morgan	4292	4280	4268	4255	4241	4225	-0.31%
1	Phillips	1099	1088	1076	1064	1051	1037	-1.15%
1	Sedgwick	769	763	756	749	741	732	-0.98%
1	Washington	1155	1155	1153	1148	1141	1132	-0.40%
1	Yuma	1934	1924	1912	1899	1885	1870	-0.67%
Region Total		12858	12825	12782	12731	12670	12600	-0.40%
2A	Larimer	23856	24260	24650	25035	25425	25829	1.60%
2B	Weld	18012	18257	18499	18744	18995	19254	1.34%
3A	Adams	29732	30848	31956	33054	34137	35208	3.44%
3A	Arapahoe	41778	43065	44348	45642	46959	48326	2.95%
3A	Clear Creek	806	814	823	832	843	855	1.19%
3A	Denver	84200	84368	84407	84342	84194	83999	-0.05%
3A	Douglas	4051	4234	4428	4634	4855	5096	4.70%
3A	Gilpin	336	336	336	336	336	336	0.00%
3A	Jefferson	51047	52733	54428	56143	57890	59690	3.18%

1990 Based Economic - Demographic Projections							Average Annual Percent Change	
Region	County	1990*	1991	1992	1993	1994	1995	
Region Total		211950	216398	220726	224983	22914	233510	1.96%
3B	Boulder	23708	24204	24720	25262	25832	26439	2.20%
4	El Paso	44375	43572	46745	47902	49045	50286	2.53%
4	Park	816	853	888	923	956	991	3.96%
4	Teller	1399	1453	1507	1558	1609	1658	3.46%
Region Total		46590	47878	49140	50383	51610	52935	2.59%
5	Cheyenne	483	478	473	467	460	453	-1.27%
5	Elbert	1064	1089	1114	1139	1166	1195	2.35%
5	Kit Carson	1508	1506	1503	1498	1492	1485	-0.31%
5	Lincoln	1104	1098	1091	1082	1072	1064	-0.74%
Region Total		4159	4171	4181	4186	4190	4197	0.18%
6	Baca	1192	1185	1175	1164	1150	1136	-0.96%
6	Bent	1236	1239	1239	1237	1232	1224	-0.19%
6	Crowley	757	751	745	737	729	719	-1.02%
6	Kiowa	408	402	395	389	383	377	-1.57%
6	Otero	4386	4362	4336	4309	4281	4252	-0.62%
6	Prowers	2227	2237	2245	2252	2257	2261	0.30%
Region Total		10206	10176	10135	10088	10032	9969	-0.47%
7	Pueblo	25016	25284	25511	25695	25835	25937	0.73%
8	Alamosa	1700	1709	1721	1733	1748	1763	0.73%
8	Conejos	1386	1389	1391	1391	1389	1386	0.00%
8	Costilla	687	690	692	693	693	694	0.20%
8	Mineral	112	114	116	118	120	122	1.73%
8	Rio Grande	2043	2042	2039	2035	2029	2023	-0.20%
8	Saguache	751	751	750	749	747	746	-0.13%
Region Total		6679	6695	6709	6719	6726	6734	0.16%

1990 Based Economic - Demographic Projections							Average Annual Percent Change	
Region	County	1990*	1991	1992	1993	1994	1995	
9	Archuleta	971	1006	1036	1062	1084	1102	2.57%
9	Dolores	300	304	309	314	319	324	1.55%
9	La Plata	4450	4408	4358	4305	4248	4192	-1.19%
9	Montezuma	3214	3260	3302	3339	3371	3400	1.13%
9	San Juan	72	74	77	80	84	88	4.10%
Region Total		9007	9052	9082	9100	9106	9106	0.22%
10	Delta	5929	5896	5856	5811	5761	5708	-0.76%
10	Gunnison	941	943	945	945	946	946	0.11%
10	Hinsdale	87	90	91	93	94	96	1.99%
10	Montrose	5252	5263	5271	5277	5281	5285	0.13%
10	Ouray	422	431	439	447	455	463	1.87%
10	San Miguel	250	253	256	258	260	263	1.02%
Region Total		12881	12876	12858	12831	12797	12761	-0.19%
11	Garfield	4144	4130	4109	4083	4054	4024	-0.59%
11	Mesa	18108	18283	18418	18519	18592	18649	0.59%
11	Moffat	1306	1321	1335	1347	1359	1372	0.99%
11	Rio Blanco	800	801	803	808	812	818	0.45%
Region Total		24358	24535	24665	24757	24817	24863	0.41%
12	Eagle	1093	1115	1137	1161	1187	1215	2.14%
12	Grand	950	968	981	991	985	981	0.65%
12	Jackson	260	261	262	263	264	265	0.38%
12	Pitkin	898	925	951	977	1004	1033	2.84%
12	Routt	1134	1142	1152	1164	1178	1194	1.04%
12	Summit	611	640	668	694	719	741	3.94%
Region Total		4946	5051	5151	5250	5337	5429	1.88%
13	Chaffee	2800	2825	2844	2856	2862	2864	0.45%
13	Custer	407	415	423	430	436	442	1.66%

1990 Based Economic - Demographic Projections

**Average
Annual
Percent
Change**

Region	County	1990*	1991	1992	1993	1994	1995	
13	Fremont	7751	7755	7747	7728	7699	7661	-0.23%
13	Lake	683	695	707	721	735	747	-1.81%
Region Total		11641	11690	11721	11735	11732	11714	0.13%
14	Huerfano	1632	1618	1602	1583	1562	1539	-1.17%
14	Las Animas	3466	3433	3399	3362	3322	3281	-1.09%
Region Total		5098	5051	5001	4945	4884	4820	-1.12%

These projections were prepared by the Colorado Division of Local Government on 7/23/91. These projections are based upon 7/1/90 population estimates based upon 4/90 census data. Figures in the "1990" column differ from 1990 data used for AAA FY 92 estimated allocations. Data used for the AAA FY 92 estimated allocations were 4/90 census data.

Prepared by: Aging and Adult Services, Colorado Department of Social Services.

APPENDIX D

Colorado Long Term Care Ombudsmen Program - Federal Fiscal Year 1991
Number and Type of Facility Complained Against

REGION	SNF or ICF	BOARD/ CARE	REGULATORY/ REIMBURSEMENT AGENCIES	OTHERS	TOTAL
1	236	9	14	5	264
2A	183	103	16	30	332
2B	77	70	3	21	171
3A	966	68	98	8	1140
3B	404	37	44	1	486
4	480	121	13	1	615
5	332	27	1	2	363
6	147	2	4	5	158
7	158	92	118	51	419
8	182	0	5	4	191
9	46	50	1	9	106
10	176	12	24	2	214
11	793	96	32	32	953

12	5	0	0	4	9
13	136	13	32	0	181
14	204	0	2	0	206
TOTAL	4525	700	407	175	5807
STATE LTCO	33	1	6	0	40
OVERALL TOTAL	4558	701	413	175	5847
% OF TOTAL	78%	12%	7%	3%	100%
LTCO = Long Term Care Ombudsmen SNF = Skilled Nursing Facility ICF = Intermediate Care Facility					

APPENDIX E

TITLE 12 PROFESSIONS AND OCCUPATIONS

Article

Revised Nursing Home Administrators Statute

12-39-101 Legislative declaration. The general assembly declares that the intent of this article is to provide a measure of protection to the aged and handicapped residents of nursing homes in this state by providing a means of regulation of nursing home administrators to ensure quality administration and sound management of nursing homes. It is also the intent of the general assembly that the board of examiners of nursing home administrators be adequately funded to carry out the duties and functions specified by this article as well as the legislative intent expressed in this section.

12-39-102 Administrator license required. (1) No nursing home in this state shall be operated unless it is under the supervision of an administrator who holds a valid nursing home administrator's license or temporary license issued pursuant to this article. No person shall practice or offer to practice nursing home administration in this state or use any title, sign, card, or device to indicate that he is a nursing home administrator unless such person has been duly licensed as a nursing home administrator as required by this article.

- (2) The nursing home administrator in each of the three state home and training schools at Grand Junction, Pueblo, and Wheat Ridge is not required to be the superintendent of such facility.

12-39-103 Definitions. As used in this article, unless the context otherwise requires:

- (1) "Board" means the board of examiners of nursing home administrators.
- (2) "Nursing home" means any institution or facility, INCLUDING NURSING CARE FACILITIES, defined as such for licensing purposes under state law or pursuant to the rules for nursing homes of the department of health, whether proprietary or nonprofit, and includes but is not limited to nursing homes owned or administered by the state government or any agency or political subdivision thereof.

- (3) "Nursing home administrator" means any individual licensed and responsible for planning, organizing, directing, and controlling the operation of a nursing home or who in fact performs such functions, whether or not such functions are shared by one or more other persons.
- (4) "Nursing home administrator-in-training" means an individual registered as such pursuant to the provisions of this article.
- (5) "Practice of nursing home administration" means the planning, organizing, directing, and control of the operation of a nursing home.

12-39-104 Board of examiners of nursing home administrators - subject to termination.

(1) There is hereby created a board of examiners of nursing home administrators in the division of registrations in the department of regulatory agencies, which board shall be composed of SEVEN MEMBERS AS FOLLOWS: Four members shall be practicing nursing home administrators (comprised of one hospital administrator, one non-profit, one proprietary, and one continuum of care administrator) duly licensed under this article, ONE MEMBER SHALL BE A PROFESSIONAL in the long term care industry, and two members shall be representative of the public at large. No more than three of the members of the board shall be officials or full-time employees of state government or local governments. The term of office for each member of the board shall be three years. No member of the board shall serve more than two consecutive terms.

- (2) APPOINTMENTS TO THE BOARD SHALL BE MADE BY THE GOVERNOR. THE GOVERNOR MAY REMOVE ANY BOARD MEMBER FOR INCOMPETENCY, FOR UNPROFESSIONAL CONDUCT, OR FOR WILLFUL MISCONDUCT. ACTIONS CONSTITUTING NEGLIGENCE OF DUTY SHALL INCLUDE BUT NOT BE LIMITED TO, THE FAILURE OF BOARD MEMBERS TO ATTEND THREE CONSECUTIVE MEETINGS IN ANY ONE CALENDAR YEAR. APPOINTMENTS TO FILL VACANCIES SHALL BE MADE FOR THE REMAINDER OF THE UNEXPIRED TERM. A MEMBER WHO IS A PRACTICING NURSING HOME ADMINISTRATOR SHALL SERVE FOR THE TERM FOR WHICH HE WAS APPOINTED EVEN IF, DURING SUCH TERM, HE CEASES BEING A PRACTICING NURSING HOME ADMINISTRATOR.
- (3) The board shall elect annually from its membership a chairman and vice-chairman. The board shall hold two or more meetings each year. At any meeting a majority shall constitute a quorum.

- (4) The board shall exercise its powers and perform its duties and functions specified by this article under the department of regulatory agencies and the executive director thereof and the division of registrations as if the same were transferred to the department by a type 1 transfer, as such transfer is defined in the "Administrative Organization Act of 1968," being article 1 of title 24, C.R.S. 1973.
- (5) THE DIVISION DIRECTOR OF THE DIVISION OF REGISTRATIONS OF THE DEPARTMENT OF REGULATORY AGENCIES MAY APPOINT, SUBJECT TO SECTION 13 OF ARTICLE XII OF THE STATE CONSTITUTION, A EXECUTIVE OFFICER TO THE BOARD. HE OR SHE SHALL BE THE EXECUTIVE OFFICER TO THE BOARD BUT SHALL NOT BE A MEMBER OF THE BOARD. HE SHALL HAVE SUCH POWERS AND SHALL PERFORM SUCH DUTIES AS ARE PRESCRIBED BY LAW AND THE RULES AND REGULATIONS OF THE BOARD. Additional staff to adequately assist the board and the program administrator in the keeping of the records and in the performance of THEIR DUTIES MAY BE APPOINTED BY THE DIVISION DIRECTOR OF THE DIVISION OF REGISTRATIONS OF THE DEPARTMENT OF REGULATORY AGENCIES. All employees of the board shall be appointed and serve in accordance with section 13 of article XII of the state constitution.
- (6) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the board of examiners of nursing home administrators created by this section.
- (7) This section shall take effect July 1, 1993. Members serving on the board of examiners of nursing home administrators as it existed prior to said date shall continue to serve until their successors are appointed.

12-39-105 Powers and duties of the board. (1) The board has the following powers and duties:

- (a) TO DEVELOP AND IMPROVE STANDARDS PURSUANT TO RULES AND REGULATIONS ADOPTED BY THE BOARD AND enforce standards consistent with this article which shall be met by individuals in order to receive and retain a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators will be individuals who are ~~of good character and are otherwise suitable~~ QUALIFIED by education and training in the APPROPRIATE field of ~~health care administration, are qualified~~ to serve as nursing home administrators;

- (b) To develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;
- (c) To issue licenses ~~or registration~~ to individuals determined, after application of such techniques, to meet such standards and to revoke or suspend licenses previously issued by the board in any case where the individual holding any such license ~~or registration~~ is determined substantially to have failed to conform to the requirements of such standards;
- (d) To establish and carry out procedures designed to ensure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards, including provision of a statement of nursing home administrators' responsibilities and duties;
- (e) To conduct investigations, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board and, in connection with any investigation following the filing of a formal signed complaint or any hearing, to administer oaths and issue subpoenas compelling the attendance and testimony of witnesses and the production of books, papers, or records relevant to an investigation or hearing. Any subpoena issued under the authority of this paragraph (e) shall be enforceable by the district court.
- (f) THE BOARD SHALL CONSIDER WITHOUT LIMITATION ALL OF THE FOLLOWING IN MAKING ANY DETERMINATION TO INITIATE DISCIPLINARY ACTION WHETHER BASED ON A SPECIFIC COMPLAINT OR AS AN OUTCOME OF SURVEY RESULTS BY THE HEALTH FACILITIES DIVISION OF THE DEPARTMENT OF HEALTH:
 - (1) ANY INFORMATION PROVIDED TO THE BOARD BY THE ADMINISTRATOR;
 - (2) THE FACTS AS STATED IN REPORTS RECEIVED THAT OCCURRED DURING THE TIME AN ADMINISTRATOR WAS SERVING IN THE CAPACITY OF ADMINISTRATOR IN THE FACILITY;
 - (3) WHETHER THE ADMINISTRATOR COULD HAVE OR SHOULD HAVE PREVENTED THE CIRCUMSTANCES WHICH

RESULTED IN THE INVESTIGATION.

- (g) PRIOR TO MAKING A FINAL DETERMINATION TO INITIATE ACTION AGAINST AN ADMINISTRATOR, THE BOARD SHALL NOTIFY THE ADMINISTRATOR THAT THE BOARD IS CONSIDERING ACTION AND PROVIDE THE ADMINISTRATOR WITH AN OPPORTUNITY TO SHOW JUST CAUSE WHY REMEDIAL OR DISCIPLINARY ACTION SHOULD NOT BE INITIATED.
 - (h) ON OR BEFORE JULY 1, 1994, THE BOARD SHALL DEVELOP RULES AND REGULATIONS WITH INPUT FROM LONG TERM CARE FACILITY PROVIDER ASSOCIATIONS, THE HEALTH FACILITIES DIVISION OF THE DEPARTMENT OF HEALTH, THE OFFICE OF THE STATE ATTORNEY GENERAL, AND CONSUMER REPRESENTATIVES REGARDING FACTORS TO BE CONSIDERED IN THE DETERMINATION A PATTERN OF POOR PERFORMANCE AND WHETHER OR NOT REMEDIAL OR DISCIPLINARY ACTIONS ARE WARRANTED.
 - (i) IF THE BOARD DETERMINES THAT REPORTS RECEIVED FROM ANY SOURCE ESTABLISH EVIDENCE OF A PATTERN OF POOR PERFORMANCE OF THE DUTIES FOR WHICH A LICENSE IS ISSUED BY THE BOARD AND, THEREFORE, CONSTITUTE GROUNDS FOR DISCIPLINARY ACTION, THE BOARD SHALL INITIATE SUCH ACTION AS WARRANTED.
 - (j) To ensure that there is posted in each nursing home, in a conspicuous place and in clearly legible type, a notice giving the address and telephone number of the board and stating that complaints may be made to the board;
 - (K) TO PREPARE AND TRANSMIT ANNUALLY, IN THE FORM AND MANNER PRESCRIBED BY THE HEADS OF THE PRINCIPAL DEPARTMENTS PURSUANT TO THE PROVISIONS OF SECTION 24-1-136 C.R.S., A REPORT ACCOUNTING TO THE GOVERNOR AND THE GENERAL ASSEMBLY FOR THE EFFICIENT DISCHARGE OF ALL RESPONSIBILITIES ASSIGNED BY LAW TO THE BOARD.
- (2) EACH LICENSEE SHALL, WITHIN 30 DAYS, NOTIFY THE BOARD OF ALL LEGAL ACTIONS TAKEN AGAINST THE ADMINISTRATOR EACH TIME THAT HE OR SHE BECOMES THE DESIGNATED ADMINISTRATOR OF A LONG TERM HEALTH CARE FACILITY AND EACH TIME THAT THE

APPOINTMENT TERMINATES. EACH NOTIFICATION SHALL INCLUDE THE NAME AND ADDRESS OF THE FACILITY OR FACILITIES INVOLVED.

- (3) The board or any committee or member thereof or any hearing officer designated by such board acting in an official capacity has the powers and duties as set forth in article 4 of title 24, C.R.S. 1973. Any hearing officer shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S. 1973.
- (4) The board also has the authority to make rules not inconsistent with law as may be necessary for the proper performance of its duties and to take such other actions as may be necessary to enable the state to meet the requirements set forth in section 1908 of the "Social Security Act," the federal rules promulgated thereunder, department of health statutes, and other pertinent federal requirements.

12-39-106 Qualifications for admission to examination. (1) The board shall admit to examination for licensure as a nursing home administrator any applicant who pays a fee as determined by the board, who submits evidence of suitability prescribed by the board, and who is at least twenty-one years old; except that:

- (a) ON AND AFTER JANUARY 1, 1994 NO APPLICANT FOR A LICENSE AS A NURSING HOME ADMINISTRATOR SHALL BE ADMITTED TO SUCH LICENSING EXAMINATION, NOR SHALL SUCH APPLICANT BE ENTITLED TO OR BE GRANTED A LICENSE AS A NURSING HOME ADMINISTRATOR, UNLESS SUCH APPLICANT SUBMITS WRITTEN EVIDENCE, ON FORMS PROVIDED BY THE BOARD, THAT HE/SHE HAS SUCCESSFULLY COMPLETED FOUR YEARS OF COLLEGE LEVEL STUDY AND HAS BEEN AWARDED A BACHELORS, MASTERS OR DOCTORAL DEGREE IN NURSING, HEALTH CARE MANAGEMENT/ADMINISTRATION, BUSINESS ADMINISTRATION WITH AN EMPHASIS IN A HEALTH RELATED AREA, OR A HEALTH RELATED DEGREE WITH EMPHASIS IN MANAGEMENT/ADMINISTRATIVE SCIENCES.
- (2) Any person who applies for examination pursuant to paragraph (a) subsection (1) of this section shall also be subject to the requirements of section 12-39-107.
- (3) Any person who applies for examination pursuant to paragraph (a) subsection (1) of this section, in lieu of the educational requirements provided for therein, may submit evidence satisfactory to the board that SUCH APPLICANT HAS OBTAINED TWO YEARS OF SATISFACTORY PRACTICAL EXPERIENCE IN NURSING HOME ADMINISTRATION OR IN A COMPARABLE HEALTH

MANAGEMENT/ADMINISTRATIVE AREA FOR EACH YEAR OF REQUIRED COLLEGE LEVEL STUDY IF IN COMPLIANCE WITH FEDERAL REQUIREMENTS.

12-39-107 Administrator-in-Training. (1) Every applicant for a nursing home administrator license who has otherwise qualified under the provisions of section 12-39-106 shall be granted admission to the administrator-in-training program in accordance with the rules of the board. Upon successful completion of the 1000 hours training period, said applicant shall be eligible to take the examination.

- (2) The administrator-in-training shall submit bi-monthly progress reports on forms provided by the board.
- (3) Every nursing home administrator-in-training shall register the fact of such training with the board in accordance with the rules and on forms provided by the board.
- (4) THE BOARD SHALL, THROUGH RULES AND REGULATIONS, ESTABLISH A MONITORING MECHANISM PROVIDING OVERSIGHT OF THE ADMINISTRATOR-IN-TRAINING PROGRAM.
- (5) The board may waive any portion required by subsection (1) of this section if it finds that the applicant has prior experience or training sufficient to satisfy requirements established by rule or regulation of the board.

12-39-108 Examinations. (1) The board shall determine the subjects of examination for all applicants for licensure as nursing home administrators and the examination shall be the same for all candidates for licensure as nursing home administrators.

- (2) Examinations shall be held at least semiannually at such times and places as the board shall designate. Any examination shall be prepared or approved by the board.

12-39-109 Reciprocity. (1) The board shall issue a license to any person duly licensed to practice nursing home administration in another state or territory of the United States who possesses credentials and qualifications which are substantially equivalent to the requirements of section 12-39-106 and who successfully completes the Colorado state examination provided for in section 12-39-107. For purposes of this section, "state or territory" includes the District of Columbia and the commonwealth of Puerto Rico.

- (2) An applicant for licensure under this section shall submit to the board, in a form

prescribed by the board, all of the following:

- (a) Evidence that the applicant holds a current, active license to practice nursing home administration issued by a state or territory of the United States other than Colorado. Such evidence shall include a license history issuing the license, indicating whether any disciplinary or other adverse actions are currently pending or have ever been taken in connection with that license and the final disposition of such actions if any. If an applicant is or has been licensed in more than one state or territory other than Colorado, the applicant shall submit a license history or similar record as described in this paragraph (a) from each such state or territory.
- (b) A license history or similar record, as described in paragraph (a) of this subsection (2), relating to any licenses or registrations which the applicant holds or has held in any other health care occupation in any state or territory other than Colorado. For purposes of this section, "health care occupation" includes without limitation the practices of medicine, dentistry, psychiatry, psychology, nursing, physical therapy, gerontology, chiropractic, podiatry, midwifery, optometry, pharmacy, and any other practice in which individuals are treated for medical or psychological problems or conditions, as well as the rendition of any service supportive to or ancillary to those practices.
- (c) Verification that the applicant has been engaged in the practice of nursing home administration, or has taught in a health care administration program, or has served as a member of a nursing home survey or accreditation team for three of the five years immediately preceding the date of application.
- (d) A report of any malpractice actions which are currently pending and any adverse malpractice action which has ever been taken against the applicant, and the final disposition of such actions if any.

12-39-110 Licenses. (1)(a) Any license issued by the board pursuant to the provisions of this section shall be renewed as required pursuant to section 24-34-105.

- (2) ANY PERSON HOLDING A VALID LICENSE AS A NURSING HOME ADMINISTRATOR PRIOR TO JULY 1, 1993, SHALL BE LICENSED UNDER THE PROVISIONS OF THIS ARTICLE WITHOUT FURTHER APPLICATION BY SAID PERSON.

- (3) Only an individual who has qualified as a licensed nursing home administrator under the provisions of this article and who holds a valid current license pursuant to the provisions of this section has the privilege of using the title "nursing home administrator" and the right and the privilege of using the abbreviation "N.H.A." after his name.
- (4) THE BOARD SHALL MAINTAIN A LIST OF ALL APPLICATIONS FOR LICENSING OF NURSING HOME ADMINISTRATORS, WHICH LIST SHALL SHOW: THE PLACE OF RESIDENCE, NAME AND AGE OF EACH APPLICANT, THE NAME AND ADDRESS OF THE EMPLOYER OR BUSINESS CONNECTION OF EACH APPLICANT, THE DATE OF APPLICATION, COMPLETE INFORMATION OF EDUCATIONAL AND EXPERIENCE QUALIFICATIONS, ANY ACTION TAKEN BY THE BOARD, THE NUMBER OF THE LICENSE ISSUED TO THE APPLICANT, THE DATE ON WHICH THE BOARD REVIEWED AND ACTED UPON THE APPLICATION, AND SUCH OTHER PERTINENT INFORMATION AS THE BOARD MAY DEEM NECESSARY.
- (5) The board may issue a temporary license to an applicant for a period not to exceed six months. The board shall promulgate rules or regulations for issuance of such a temporary license.
- (6) A temporary LICENSE shall be granted to an applicant who is employed as a hospital administrator by a general hospital licensed or certified by the Colorado department of health. Such temporary permit shall be granted for a period not to exceed twelve months and shall be void at such time the license holder is no longer employed by the general hospital. This temporary license shall exempt the holder from the requirements of on-site supervision while meeting the administrator-in-training obligation. The subsection (7) shall not preclude the holder of the temporary license from qualifying for the provisions of subsection (5) of this section.
- (7) To establish, pursuant to section 24-34-105 C.R.S. and publish annually a schedule of fees for licensing.
- (8) All moneys collected or received by the Board shall be transmitted to the State Treasurer who shall credit the same pursuant to section 24-34-105 C.R.S. and the General Assembly shall make annual appropriations pursuant to said section for the expenditures of the Board incurred in the performance of its duties under the article, which expenditures shall be made from such appropriations upon vouchers and warrants drawn pursuant to law.

- (9) NO NURSING HOME ADMINISTRATOR WHO HAS HAD A LICENSE REVOKED MAY APPLY FOR LICENSURE BEFORE A ONE YEAR WAITING PERIOD AFTER SUCH REVOCATION AND MUST COMPLY WITH ALL REQUIREMENTS ESTABLISHED BY RULES AND REGULATIONS OF THE BOARD.

12-39-111 Inactive License. (1) Any person licensed to practice as a nursing home administrator pursuant to this article may apply to the board to be transferred to an inactive status. Such application shall be in the form and manner designated by the board. The board may grant such status by issuing an inactive license or it may deny the application for any of the causes set forth in section 12-39-192.

- (2) Any person applying for a license under this section shall:
- (a) Provide an affidavit to the board that the applicant, after a date certain, shall not practice as a nursing home administrator in this state unless said applicant is issued a license to practice pursuant to subsection (5) of this section:
 - (b) Pay the license fee as authorized pursuant to section 24-34-105, C.R.S.;
- (3) Such inactive status shall be plainly indicated on the face of any inactive license certificate issued under this section.
- (4) The board is authorized to conduct disciplinary proceedings as set forth in section 12-39-116 against any person licensed under this section for any act committed while the person was licensed pursuant to this article.
- (5) Any person licensed under this section who wishes to resume the practice of nursing home administrator shall file an application in the form and manner the board shall designate and pay the license fee promulgated by the board pursuant to section 24-34-105, C.R.S. The board may approve such application and issue a license to practice as a nursing home administrator or may deny the application for any of the causes set forth in section 12-39-112.

12-39-112 Grounds for discipline. (1) The board has the power to revoke, suspend, withhold, or refuse to renew any license, TO PLACE ON PROBATION A LICENSEE OR TEMPORARY LICENSE HOLDER, OR TO ISSUE A LETTER OF ADMONITION TO A LICENSEE IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN subsection (3) of this section, upon proof that such person:

- (a) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;
- (b) Has been convicted of a felony or has had accepted by a court of appeal of guilty or nolo contendere to a felony OR A DEFERRED JUDGMENT. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be prima facie evidence of such conviction. In considering the possible revocation, suspension, or non-renewal of a license or temporary license, the board shall be governed by the provisions of section 24-5-101, C.R.S.
- (c) Has ~~willfully or negligently~~ acted in a manner inconsistent with the health or safety of persons under his care;
- (d) Has had a license to practice nursing home administration or any other health care occupation suspended or revoked in any jurisdiction. A certified copy of the order of suspension or revocation shall be prima facie evidence of such suspension or revocation.
- (e) HAS VIOLATED OR AIDED OR ABETTED A VIOLATION OF ANY PROVISION OF THIS ARTICLE, ANY RULE OR REGULATION ADOPTED UNDER THIS ARTICLE OR ANY LAWFUL ORDER OF THE BOARD;
- (f) HAS PRACTICED NURSING HOME ADMINISTRATION IN A MANNER WHICH FAILS TO MEET GENERALLY ACCEPTED STANDARDS FOR SUCH NURSING HOME ADMINISTRATION PRACTICE OR LICENSURE;
- (g) Has ~~negligently or willfully~~ violated any order, rule, or regulation of the board pertaining to nursing home administrators practice or licensure;
- (h) HAS FALSIFIED OR MADE INCORRECT ENTRIES OR FAILED TO MAKE ESSENTIAL ENTRIES ON PATIENT RECORDS;
- (i) IS ADDICTED TO OR DEPENDENT ON ALCOHOL OR HABIT-FORMING DRUGS AS DEFINED IN SECTION 12-22-102 (13) C.R.S., ABUSES OR ENGAGES IN THE HABITUAL OR EXCESSIVE USE OF ANY SUCH HABIT FORMING DRUG OR ANY CONTROLLED SUBSTANCE AS DEFINED IN SECTION 12-22-303 (7) C.R.S OR PARTICIPATES IN THE UNLAWFUL USE OF CONTROLLED SUBSTANCES AS DEFINED IN TITLE 18 EXCEPT THAT THE BOARD HAS THE DISCRETION NOT TO DISCIPLINE THE LICENSEE IF HE IS

PARTICIPATING IN GOOD FAITH IN A PROGRAM APPROVED BY THE BOARD DESIGNED TO END SUCH ADDICTION OR DEPENDENCY;

- (j) HAS A PHYSICAL OR MENTAL DISABILITY WHICH RENDERS HIM UNABLE TO PRACTICE NURSING HOME ADMINISTRATION WITH REASONABLE SKILL AND SAFETY TO THE PATIENTS AND WHICH MAY ENDANGER THE HEALTH OR SAFETY OF PERSONS UNDER HIS CARE;
- (k) HAS VIOLATED THE CONFIDENTIALITY OF INFORMATION OR KNOWLEDGE AS PRESCRIBED BY LAW CONCERNING ANY PATIENT;
- (l) HAS ENGAGED IN ANY CONDUCT WHICH WOULD CONSTITUTE A CRIME AS DEFINED IN TITLE 18, C.R.S. AND WHICH CONDUCT RELATES TO SUCH PERSON'S EMPLOYMENT AS A LICENSED NURSING HOME ADMINISTRATOR. IN CONJUNCTION WITH ANY DISCIPLINARY PROCEEDING PERTAINING TO THIS PARAGRAPH (l), THE BOARD SHALL BE GOVERNED BY THE PROVISIONS OF SECTION 24-5-101, C.R.S.
- (m) HAS VIOLATED SECTION 18-13-119 C.R.S. (ABUSE OF HEALTH INSURANCE);

~~(2) Except as specifically provided in subsection (1) of this section, the board need not find that the actions which are grounds for discipline were willful OR NEGLIGENCE, but it may consider the same in determining the nature of disciplinary sanctions imposed.~~

(3) WHEN A COMPLAINT OR AN INVESTIGATION DISCLOSES AN INSTANCE OF MISCONDUCT WHICH, IN THE OPINION OF THE BOARD, DOES NOT WARRANT FORMAL ACTION BY THE BOARD BUT WHICH SHOULD NOT BE DISMISSED AS BEING WITHOUT MERIT, A LETTER OF ADMONITION MAY BE SENT BY CERTIFIED MAIL TO THE NURSING HOME ADMINISTRATOR AGAINST WHOM A COMPLAINT WAS MADE AND A COPY THEREOF TO THE PERSON MAKING THE COMPLAINT, BUT, WHEN A LETTER OF ADMONITION IS SENT BY CERTIFIED MAIL BY THE BOARD TO A NURSING HOME ADMINISTRATOR COMPLAINED AGAINST, SUCH NURSING HOME ADMINISTRATOR SHALL BE ADVISED THAT HE HAS THE RIGHT TO REQUEST IN WRITING, WITHIN TWENTY DAYS AFTER PROVEN RECEIPT OF THE LETTER, THAT FORMAL DISCIPLINARY PROCEEDINGS BE INITIATED AGAINST HIM TO ADJUDICATE THE

PROPRIETY OF THE CONDUCT UPON WHICH THE LETTER OF ADMONITION IS BASED. IF SUCH REQUEST IS TIMELY MADE, THE LETTER OF ADMONITION SHALL BE DEEMED VACATED, AND THE MATTER SHALL BE PROCESSED BY MEANS OF FORMAL DISCIPLINARY PROCEEDINGS.

- (4) IF ANY LICENSEE FAILS TO RENEW SUCH LICENSE PRIOR TO ITS EXPIRATION, THE LICENSE SHALL AUTOMATICALLY EXPIRE. A NURSING HOME ADMINISTRATOR FORMERLY LICENSED IN THE STATE MAY HAVE A LICENSE REINSTATED WHICH HAS EXPIRED PURSUANT TO RULES AND REGULATIONS ESTABLISHED BY THE BOARD.
- (5) IF THE BOARD FINDS THE CHARGES PROVEN AND ORDERS THAT DISCIPLINE BE IMPOSED, IT MAY ALSO REQUIRE THE LICENSEE TO PARTICIPATE IN A TREATMENT PROGRAM OR COURSE OF TRAINING OR EDUCATION AS A REQUIREMENT FOR REINSTATEMENT AS MAY BE NEEDED TO CORRECT ANY DEFICIENCY FOUND IN THE HEARING.

12-30-113 Penalties. (1) It is a misdemeanor for any person to:

- (a) Sell or fraudulently obtain or attempt to obtain or furnish any license or aide or abet therein; or
 - (b) Practice as a nursing home administrator under cover of any license illegally or fraudulently obtained or unlawfully issued; or
 - (c) Practice as a nursing home administrator or use in connection with his name any designation tending to imply that he is a nursing home administrator unless duly licensed and registered to so practice under the provisions of this article; or
 - (d) Practice as a nursing home administrator during the time his license issued under the provisions of this article is suspended or revoked or has otherwise expired.
- (2) Such misdemeanor shall be punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

12-39-114 WITHHOLDING OR DENIAL OF LICENSE - HEARING. (1) THE BOARD IS EMPOWERED TO DETERMINE SUMMARILY WHETHER AN APPLICANT FOR A LICENSE OR A TEMPORARY LICENSE TO PRACTICE AS A NURSING HOME ADMINISTRATOR POSSESSES THE QUALIFICATIONS REQUIRED BY THIS ARTICLE OR WHETHER THERE IS PROBABLE CAUSE TO BELIEVE THAT AN APPLICANT HAS DONE ANY OF THE ACTS SET FORTH IN SECTION 12-39-112 AS GROUNDS FOR DISCIPLINE. AS USED IN THIS SECTION, "APPLICANT" DOES NOT INCLUDE A RENEWAL APPLICANT.

- (2) If the board determines that an applicant does not possess the qualifications required by this article or that probable cause exists to believe that an applicant has done any of the acts set forth in section 12-39-112, the board may withhold or deny the applicant a license. In such instance, the provisions of section 24-4-104(9), C.R.S., shall apply, and the board shall provide such applicant with a statement in writing setting forth the basis of the board's determination that the applicant does not possess the qualifications required by this article or the factual basis for probable cause that the applicant has done any of the acts set forth in section 12-39-112.
- (3) If the applicant requests a hearing pursuant to the provisions of section 24-4-204(9), C.R.S., and fails to appear without good cause at such hearing, the board may affirm its prior action of withholding or denial without conducting a hearing.
- (4) Following a hearing, the board shall affirm, modify, or reverse its prior action in accordance with its findings at such hearing.
- (5) No action shall lie against the board for the withholding or denial of a license or temporary license without a hearing in accordance with provisions of this section if the board acted reasonably and in good faith.
- (6) At such hearing, the applicant shall have the burden of proof to show that he possesses the qualifications required for licensure under this article. The board shall have the burden of proof to show commission of acts set forth in section 12-39-112.

12-39-115 MENTAL AND PHYSICAL EXAMINATION OF LICENSEES. (1) IF ANY LICENSEE OR TEMPORARY LICENSE HOLDER IS DETERMINED TO BE MENTALLY INCOMPETENT OR INSANE BY A COURT OF COMPETENT JURISDICTION, HIS LICENSE SHALL AUTOMATICALLY BE SUSPENDED BY THE BOARD, AND SUCH SUSPENSION SHALL CONTINUE UNTIL THE LICENSEE IS DETERMINED BY SUCH COURT TO BE RESTORED TO REASON OR UNTIL SUCH PERSON IS DULY DISCHARGED AS RESTORED TO REASON IN ANY OTHER MANNER PROVIDED BY

LAW.

- (2) (a) IF THE BOARD HAS REASONABLE CAUSE TO BELIEVE THAT A LICENSEE OR TEMPORARY LICENSE HOLDER IS UNABLE TO PRACTICE WITH REASONABLE SKILL AND SAFETY TO PATIENTS BECAUSE OF A CONDITION DESCRIBED IN SECTION 12-39-112(1)(i) OR (1)(j), IT MAY REQUIRE SUCH PERSON TO SUBMIT TO A MENTAL OR PHYSICAL EXAMINATION BY A PHYSICIAN IT DESIGNATES. UPON THE FAILURE OF SUCH PERSON TO SUBMIT TO SUCH MENTAL OR PHYSICAL EXAMINATION, UNLESS DUE TO CIRCUMSTANCES BEYOND HIS CONTROL, THE BOARD MAY SUSPEND SUCH PERSON'S LICENSE UNTIL SUCH TIME AS SUCH PERSON SUBMITS TO THE REQUIRED EXAMINATIONS.
- (b) EVERY LICENSEE OR TEMPORARY LICENSE HOLDER, BY ENGAGING IN THE PRACTICE OF NURSING HOME ADMINISTRATION IN THIS STATE OR BY APPLYING FOR THE RENEWAL OF HIS LICENSE OR TEMPORARY LICENSE THEREFORE, SHALL BE DEEMED TO HAVE GIVEN CONSENT TO SUBMIT TO A MENTAL OR PHYSICAL EXAMINATION WHEN SO DIRECTED IN WRITING BY THE BOARD. THE DIRECTION TO SUBMIT TO SUCH AN EXAMINATION SHALL CONTAIN THE BASIS OF THE BOARD'S REASONABLE CAUSE TO BELIEVE THAT THE LICENSEE IS UNABLE TO PRACTICE WITH REASONABLE SKILL AND SAFETY TO PATIENTS BECAUSE OF A CONDITION DESCRIBED IN SECTION 12-39-112(1)(i) OR (1)(j). THE LICENSEE SHALL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS TO THE ADMISSIBILITY OF THE EXAMINING PHYSICIAN'S TESTIMONY OR EXAMINATION REPORTS ON THE GROUND OF PRIVILEGED COMMUNICATION.
- (c) NOTHING IN THIS SECTION SHALL PREVENT THE LICENSEE FROM SUBMITTING TO THE BOARD TESTIMONY OR EXAMINATION REPORTS OF A PHYSICIAN DESIGNATED BY THE LICENSEE PERTAINING TO A CONDITION DESCRIBED IN SECTION 12-39-112(1)(i) OR (1)(j) WHICH MAY BE CONSIDERED BY THE BOARD IN CONJUNCTION WITH, BUY NOT IN LIEU OF, TESTIMONY AND EXAMINATION REPORTS OF THE PHYSICIAN DESIGNATED BY THE BOARD.
- (d) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than one before the board and shall not be deemed public records nor made available to

the public.

12-39-116 Disciplinary proceedings - hearing officers - judicial review. (1) The board, through the department of regulatory agencies, may employ hearing officers, on a full-time or part-time basis, to conduct hearings as provided by this article or on any matter within the board's jurisdiction upon such conditions and terms as the board may determine.

- (2) A proceeding for discipline of a licensee or a temporary license holder may be commenced when the board has reasonable grounds to believe that a licensee under the board's jurisdiction has committed acts which may violate section 12-39-112.
- (3) Disciplinary proceedings shall be conducted in the manner prescribed by article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to said article by the board or a hearing officer at the board's discretion.
- (4) No previously issued license to engage in the practice of nursing home administrators shall be revoked or suspended until after a hearing conducted pursuant to section 24-4-105, C.R.S. except as provided for emergency situations by section 24-4-104, C.R.S. The denial of an application to renew an existing license shall be treated in all respects as a revocation. If an application for a new license is denied, the applicant, within sixty days after the giving of notice of such action, may request a hearing as provided in section 24-4-105, C.R.S.
- (5) In order to aid the board in any hearing or investigation instituted pursuant to this section, the board, through any member or executive officer thereof, shall have the power to issue subpoenas commanding the attendance of witnesses and the production of copies of any records containing information relevant to the practice of nursing home administration rendered by any licensee, including, patient records and personal records of the licensee. The person providing such copies shall prepare them from the original record and shall delete from the copy provided pursuant to the subpoena the name of the patient, but he shall identify the patient by a numbered code, to be retained by the custodian of the records from which the copies were made. Upon certification of the custodian that the copies are true and complete except for the patient's name, they shall be deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. No privilege of confidentiality shall exist with respect to such copies, and no liability shall lie against the board or the custodian or his authorized employee for furnishing or using such copies in accordance with this subsection (6).

- (6) ANY PERSON PARTICIPATING IN GOOD FAITH IN THE MAKING OF A COMPLAINT OR REPORT OR PARTICIPATING IN ANY INVESTIGATIVE OR ADMINISTRATIVE PROCEEDING PURSUANT TO THIS ARTICLE SHALL BE IMMUNE FROM ANY LIABILITY, CIVIL OR CRIMINAL, THAT OTHERWISE MIGHT RESULT BY REASON OF SUCH ACTION.
- (7) An employer of a nursing home administrator shall report to the board any disciplinary action taken against the nursing home administrator or resignation in lieu of a disciplinary action for conduct which constitutes a violation of this article.
- (8) COMPLAINTS, INVESTIGATIONS, HEARINGS, MEETINGS, OR ANY OTHER PROCEEDINGS OF THE BOARD CONDUCTED PURSUANT TO THE PROVISIONS OF THIS ARTICLE AND RELATING TO THE DISCIPLINARY PROCEEDINGS SHALL BE EXEMPT FROM THE PROVISION OF ANY LAW REQUIRING THAT PROCEEDINGS OF THE BOARD BE CONDUCTED PUBLICLY OR THAT THE MINUTES OR RECORDS OF THE BOARD WITH RESPECT TO ACTION OF THE BOARD TAKEN PURSUANT TO THE PROVISIONS OF THIS ARTICLE BE OPEN TO PUBLIC INSPECTION; EXCEPT THAT THIS EXEMPTION SHALL APPLY ONLY WHEN THE BOARD OR ANY ADMINISTRATIVE LAW JUDGE ACTING ON BEHALF OF THE BOARD, SPECIFICALLY DETERMINES THAT IT IS IN THE BEST INTEREST OF A COMPLAINANT OR OTHER RECIPIENT OF SERVICES TO KEEP SUCH PROCEEDINGS OR DOCUMENTS RELATING THERETO CLOSED TO THE PUBLIC OR IF THE LICENSEE IS VIOLATING SECTION 12-39-112 (1)(i), THE LICENSEE IS PARTICIPATING IN GOOD FAITH IN A PROGRAM APPROVED BY THE BOARD DESIGNED BY THE BOARD TO END SUCH ADDICTION OR DEPENDENCY AND THE LICENSEE HAS NOT VIOLATED ANY PROVISIONS OF THE BOARD ORDER REGARDING HIS/HER PARTICIPATION IN SUCH A TREATMENT PROGRAM. IF THE BOARD DETERMINES THAT IT IS IN THE BEST INTEREST OF A COMPLAINANT OR OTHER RECIPIENT OF SERVICES TO KEEP SUCH PROCEEDINGS OR DOCUMENTS RELATING THERETO CLOSED TO THE PUBLIC, THEN THE FINAL ACTION OF THE BOARD MUST BE OPEN TO THE PUBLIC WITHOUT DISCLOSING THE NAME OF THE CLIENT OR OTHER RECIPIENT. FINAL BOARD ACTIONS AND ORDERS APPROPRIATE FOR JUDICIAL REVIEW MAY BE JUDICIALLY REVIEWED IN THE COURT OF APPEALS, AND JUDICIAL PROCEEDINGS FOR THE ENFORCEMENT OF A BOARD ORDER MAY BE INSTITUTED IN ACCORDANCE WITH SECTION 24-4-106 (11), C.R.S.

12-39-117 Advisory Committee. (1) The board may appoint advisory committees including professional review committees to assist in the performance of its duties. Each advisory committee shall consist of at least three licensees who have expertise in the area under review. Members of the advisory committees shall receive no compensation for their services but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties.

- (2) If a professional review committee is established pursuant to section (1) to investigate the quality of care being given by a person licensed pursuant to this article, it shall include in its membership at least three persons licensed in the same category as the licensee under review, but such committee may be authorized to act only by the board.
- (3) Any member of the board or a professional review committee authorized by the board and any witness appearing before the board or such professional review committee shall be immune from suit in any civil action brought by a licensee who is the subject of a professional review proceeding if such member or witness acts in good faith within the scope of the function of the board or such committee, has made a reasonable effort to obtain the facts of the matter as to which he acts, and acts in the reasonable belief that the action taken by him is warranted by the facts.

12-39-118 Unlawful Practices. (1) It is unlawful for any person:

- (a) To practice as a nursing home administrator unless licensed therefor;
 - (b) To use in connection with his name any designations tending to imply that he is a licensed nursing home administrator unless licensed therefor;
 - (c) To practice as a nursing home administrator during a period when his license has been suspended or revoked;
 - (d) To sell or fraudulently obtain or furnish a license to practice as a nursing home administrator or to aid or abet therein.
- (2) Any person who violates the provisions of this section commits a class 3 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S. Any person who subsequently violates any provision of this section within three years after the date of the first conviction commits a class 5 felony and shall be punished as provided in section 18-1-105, C.R.S.

12-39-119 Injunctive proceedings. The board, in the name of the people of the state of Colorado, may apply for injunctive relief through the attorney general or the district attorney in any court of competent jurisdiction to enjoin any person who does not possess a currently valid or active nursing home administrator's license from committing any act declared to be unlawful or prohibited by this article. If it is established that the defendant has been or is committing an act declared to be unlawful or prohibited by this article, the court or any judge thereof shall enter a decree perpetually enjoining said defendant from further committing such act. In the case of a violation of any injunction issued under the provisions of this section, the court or any judge thereof may summarily try and punish the offender for contempt of court. Such injunctive proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided for in this article.

12-39-120 Rule-making authority granted. All rule-making authority granted to the board under the provisions of this article is granted on the condition that the general assembly reserves the power to delete or rescind any rule of the board. All rules promulgated pursuant to this section shall be subject to sections 24-4-103(8)(c) and (8)(d) and 24-34-104(9)(b)(II), C.R.S., 1973.

12-39-121 Attorney General shall represent board and members. The attorney general of the state of Colorado shall counsel with and advise the board in connection with its duties and responsibilities under this article. In the event litigation is brought against the board or any of its individual members in connection with activities taken by it or them under the provisions of this article and such actions are free of malice, fraud, or willful neglect of duty, the attorney general shall defend without cost to any individual member thereof.

12-39-122 Nursing home administrators of church or religious denominations - exempt. A person who serves as an administrator of a nursing home conducted exclusively for persons who rely upon treatment by spiritual means alone through prayer in accordance with the creed or tenets of a church or religious denomination shall be exempt from the provisions of this article.

APPENDIX F

TITLE 12 PROFESSIONS AND OCCUPATIONS

ARTICLE 39 Current Nursing Home Administrators Statute

12-39-101. Legislative declaration. The general assembly declares that the intent of this article is to provide a measure of protection to the aged and handicapped residents of nursing homes in this state by providing a means of regulation of nursing home administrators to insure quality administration and sound management of nursing homes. It is also the intent of the general assembly that the board of examiners of nursing home administrators be adequately funded to carry out the duties and functions specified by this article as well as the legislative intent expressed in this section.

12-39-102. Administrator license required. (1) No nursing home in this state shall be operated unless it is under the supervision of an administrator who holds a currently valid nursing home administrator's license or temporary license and registration issued pursuant to this article. No person shall practice or offer to practice nursing home administration in this state or use any title, sign, card, or device to indicate that he is a nursing home administrator unless such person has been duly licensed and registered as a nursing home administrator as required by this article.

- (2) The nursing home administrator in each of the three state home and training schools at Grand Junction, Pueblo, and Wheat Ridge is not required to be the superintendent of such facility.

12-39-103. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Board" means the board of examiners of nursing home administrators.
- (2) "Conditional license" means a license issued by the board, for a period not to exceed one hundred twenty days, to an applicant for a license who meets all the requirements of reciprocity established by the board but whose application has not been approved by the board.
- (3) "Executive secretary" means the secretary of the board of examiners of nursing home administrators.

- (4) "Nursing home" means any institution or facility defined as such for licensing purposes under state law or pursuant to the rules for nursing homes of the department of health, whether proprietary or nonprofit, and includes but is not limited to nursing homes owned or administered by the state government or any agency or political subdivision thereof.
- (5) "Nursing home administrator" means any individual responsible for planning, organizing, directing, and controlling the operation of a nursing home or who in fact performs such functions, whether or not such functions are shared by one or more other persons.
- (6) "Nursing home administrator-in-training" means an individual registered as such pursuant to the provisions of this article.
- (7) "Practice of nursing home administration" means the planning, organizing, directing, and control of the operation of a nursing home.

12-39-104. Board of examiners of nursing home administrators - subject to termination - repeal of article.

(1) There is hereby created a board of examiners of nursing home administrators in the division of registrations in the department of regulatory agencies, which board shall be composed of nine members as follows: Three members shall be practicing nursing home administrators duly licensed and registered under this article, one of whom shall be an administrator of a nonprofit nursing home; one member shall be a practicing hospital administrator who is also a practicing licensed nursing home administrator; four members, without a direct financial interest in any nursing home, who have expertise in financial management and budgeting, health administration education, or geriatrics and medicine or a concern for the social and psychological welfare of patients shall be selected from other professions, agencies, and institutions concerned with the care of the chronically ill and infirm patients; and one member, without a direct financial interest in any nursing home, shall be representative of the public at large; but no more than two of the members of the board shall be officials or full-time employees of state government or local governments. All members of the board shall be residents of this state.

- (2) Three members of the initial board shall be appointed for one-year terms of office; three members of the initial board shall be appointed for two-year terms of office; and three members of the initial board shall be appointed for three-year terms of office. Thereafter, the term of office for each member of the board shall be three years. No member of the board shall serve more than two consecutive terms.

- (3) Appointments to the board shall be made by the governor. Dismissals shall be by the governor for cause. Appointments to fill vacancies shall be made for the remainder of the unexpired term. A member who is a practicing nursing home administrator shall serve for the term for which he was appointed even if, during such term, he ceases being a practicing nursing home administrator.
- (4) Each member of the board, before he enters upon the duties of his office, shall take an oath or affirmation to support the constitution of the United States and of the state of Colorado and to faithfully perform the duties of the office upon which he is about to enter.
- (5) Repealed, L. 79, p. 912, section 16, effective July 1, 1979.
- (6) The board shall elect annually from its membership a chairman and vice-chairman. The board shall hold two or more meetings each year. At any meeting a majority shall constitute a quorum.
- (7) The board shall exercise its powers and perform its duties and functions specified by this article under the department of regulatory agencies and the executive director thereof and the division of registrations as if the same were transferred to the department by a type 1 transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.
- (8) The executive director of the department of regulatory agencies may appoint, subject to section 13 of article XII of the state constitution, an executive secretary to the board. He shall be the executive officer to the board but shall not be a member of the board. He shall have such powers and shall perform such duties as are prescribed by law and the rules and regulations of the board. A clerk and sufficient deputy clerks to adequately assist the board and the executive secretary in the keeping of the records and in the performance of their duties may be appointed by the executive director of the department of regulatory agencies. All employees of the board shall be appointed and serve in accordance with section 13 of article XII of the state constitution.
- (9)(a) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the board of examiners of nursing home administrators created by this section.
 - (b) This article is repealed, effective July 1, 1993.
- (10) Repealed, L. 86, p. 1217, section 10, effective May 30, 1986.

12-39-105. Duties of the board - fee. (1) The board has the following duties:

- (a) To develop, impose, and enforce standards consistent with this article which shall be met by individuals in order to receive and retain a license as a nursing home administrator, including distributional standards for continuing education, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;
- (b) To develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;
- (c) To issue licenses and registrations to individuals determined, after application of such techniques, to meet such standards and to revoke or suspend licenses and registrations previously issued by the board in any case where the individual holding any such license and registration is determined substantially to have failed to conform to the requirements of such standards;
- (d) To establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards, including provision of a statement of nursing home administrators' responsibilities and duties;
- (e) To conduct investigations, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board and, in connection with any investigation following the filing of a formal signed complaint or any hearing, to administer oaths and issue subpoenas compelling the attendance and testimony of witnesses and the production of books, papers, or records relevant to an investigation or hearing. Any subpoena issued under the authority of this paragraph (e) shall be enforceable by the district court.

- (f) To conduct a continuing study and investigation of administrators of nursing homes within this state with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such;
 - (g) To insure that there is posted in each nursing home, in a conspicuous place and in clearly legible type, a notice giving the address and telephone number of the board and stating that complaints may be made to the board.
- (2) The fee to be paid by applicants for licenses and recertification of registration and by applicants seeking a reciprocal license issued by the board under section 12-39-110 shall be as established pursuant to section 24-34-105, C.R.S.
 - (3) The board or any committee or member thereof or any administrative law judge designated by such board acting in an official capacity has the powers and duties as set forth in article 4 of title 24, C.R.S. Any administrative law judge shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S.
 - (4) The board also has the authority to make rules not inconsistent with law as may be necessary for the proper performance of its duties and to take such other actions as may be necessary to enable the state to meet the requirements set forth in section 1908 of the "Social Security Act", the federal rules promulgated thereunder, and other pertinent federal requirements.
 - (5) The board shall issue an annual report accounting for the performance of its statutory duties. All publications circulated in quantity outside the executive branch of state government shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

12-39-106. Qualifications for admission to examination. (1) The board shall admit to examination for licensure as a nursing home administrator any applicant who pays a fee as determined by the board, who submits evidence of good moral character and suitability prescribed by the board, and who is at least twenty-one years old; except that:

- (a) On and after July 1, 1970, no applicant for a license as a nursing home administrator shall be admitted to such licensing examination, nor shall such applicant be entitled to or be granted a license as a nursing home administrator, unless such applicant submits written evidence, on forms provided for such purpose by the board, that he has successfully completed a course of study and has been graduated from a high school approved and recognized by the educational authorities of the state in which such school is located, or a political division thereof, or has submitted a certificate indicating that he has obtained high school or secondary school equivalency, such certificate being duly certified by a state educational authority, or a political division thereof.
 - (b) On and after January 1, 1975, no applicant for a license as a nursing home administrator shall be admitted to such licensing examination, nor shall such applicant be entitled to or be granted a license as a nursing home administrator, unless such applicant submits written evidence, on forms provided for such purpose by the board, that he has successfully completed two years of college-level study after high school study in an accredited institution of higher education in areas relating to nursing home or hospital administration.
- (2) Any person who applies for examination pursuant to paragraph (b) of subsection (1) of this section, in lieu of the educational requirements provided for therein, may submit evidence satisfactory to the board that such applicant has obtained two years of satisfactory practical experience in nursing home administration or in a related health administration area for each year of required post-high school education. In determining an applicant's moral character, as required by the introductory portion to subsection (1) of this section, the board shall be governed by the provisions of section 24-5-101, C.R.S.

12-39-107. Examinations. (1) The board shall determine the subjects of examination for applicants for licensure as nursing home administrators and the scope, content, and format of such examinations which, in any examination, shall be the same for all candidates; except that such examinations shall include examination of the applicant to demonstrate his proficiency in the practice and knowledge of applicable rules of health and safety within this state.

- (2) Examinations shall be held at least semiannually at such times and places as the board shall designate. Any examination shall be prepared or approved by the board.

12-39-108. Licenses. (1) An applicant for licensure as a nursing home administrator who has successfully complied with the requirements of section 12-39-106 and the standards provided for therein, has passed the examination provided for in section 12-39-107, and, where applicable, has complied with the requirements of section 12-39-111 shall be issued a license, on a form provided for that purpose by the board, certifying that the applicant has met the requirements of the laws and rules entitling him to serve, act, practice, and otherwise hold himself out as a duly licensed nursing home administrator.

- (2) The board may issue a conditional license for a period not to exceed one hundred twenty days to an applicant for a nursing home administrator's license who meets all the requirements for reciprocity established by the board but whose application has not been approved by the board. No conditional license may be renewed. No additional license fee shall be charged the holder of a conditional license upon issuance of a nursing home administrator's license.
- (3) Any license issued by the board pursuant to the provisions of this section shall be under the hand and seal of the chairman and executive secretary of the board.
- (4) If the board finds that programs of training and instruction conducted within the state are not sufficient in number or content to enable applicants for nursing home administrators' licenses and nursing home administrators to meet requirements established pursuant to this article, it shall institute and conduct or arrange with others to conduct one or more such programs and shall make provisions for their accessibility to appropriate residents of this state. The board may approve programs conducted within and without this state as sufficient to meet education and training requirements established pursuant to this article. For purposes of this subsection (4), the board has the authority to receive and disburse federal funds received pursuant to requirements of the "Social Security Act".
- (5) On and after July 1, 1978, until July 1, 1980, the board may adjust the term for a license in order to provide that approximately one-half of all licenses expire during each of the next two calendar years. The fee for such adjusted license shall be prorated accordingly. Thereafter, all licenses shall be issued for a term of two years.
- (6) Any person holding a valid license as a nursing home administrator prior to July

1, 1978, shall be licensed under the provisions of this article without further application by said person.

12-39-109. Registration. (1) Every individual who holds a valid license as a nursing home administrator issued by the board pursuant to section 12-39-108 or section 12-39-110 shall immediately upon issuance thereof be deemed registered with the board and be issued a certificate of registration. Thereafter, such individual shall annually be required to apply to the board for a new recertification of registration and report any facts requested by the board on forms provided for such purpose.

- (2) Upon making an application for a recertification of registration, such individual shall pay a biennial registration fee as established pursuant to section 24-34-105, C.R.S.
- (3) Upon receipt of such application for recertification of registration, the registration fee, and the evidence required with respect to continuing education, the board shall issue a recertification of registration to such nursing home administrator.
- (4) The license of a nursing home administrator who fails to comply with the provisions of this section and who continues to act as a nursing home administrator shall be suspended or revoked by the board in accordance with the provisions of this article.
- (5) A nursing home administrator who has been duly licensed and registered in this state, whose license has not been revoked or suspended, and whose registration has expired for a period of not longer than eighteen months may re-register within this state upon complying with the provisions of this section for recertification of registration and also filing with the board an affidavit in accordance with the rules of the board.
- (6) Only an individual who has qualified as a licensed and registered nursing home administrator under the provisions of this article and who holds a valid current registration certificate pursuant to the provisions of this section for the current annual registration period has the right and the privilege of using the title "nursing home administrator" and the right and the privilege of using the abbreviation "N.H.A." after his name. No other person shall use or shall be designated by such title or such abbreviation or any other words, letters, sign, card, or device tending to or intended to indicate that such person is a licensed and registered nursing home administrator.

- (7) The board shall maintain a register of all applications for licensing and registration of nursing home administrators, which register shall show: The place of residence, name, and age of each applicant, the name and address of the employer or business connection of each applicant, the date of application, complete information of educational and experience qualifications, the action taken by the board, the serial number of the license and of registration certificates issued to the applicant, the date on which the board reviewed and acted upon the application, and such other pertinent information as the board may deem necessary.

12-39-110. Reciprocity. (1) The board shall issue a license to any person duly licensed to practice nursing home administration in another state or territory of the United States who possesses credentials and qualifications which are substantially equivalent to the requirements of section 12-39-106 and who successfully completes the Colorado state examination provided for in section 12-39-107. For purposes of this section, "state or territory" includes the District of Columbia and the commonwealth of Puerto Rico.

- (2) An applicant for licensure under this section shall submit to the board, in a form prescribed by the board, all of the following:
 - (a) Evidence that the applicant holds a current, active license to practice nursing home administration issued by a state or territory of the United States other than Colorado. Such evidence shall include a license history or similar record, certified by an authorized agent of the state or territory issuing the license, indicating whether any disciplinary or other adverse actions are currently pending or have ever been taken in connection with that license and the final disposition of such actions if any. If an applicant is or has been licensed in more than one state or territory other than Colorado, the applicant shall submit a license history or similar record as described in this paragraph (a) from each such state or territory.
 - (b) A license history or similar record, as described in paragraph (a) of this subsection (2), relating to any licenses or registrations which the applicant holds or has held in any other health care occupation in any state or territory other than Colorado. For purposes of this section, "health care occupation" includes without limitation the practices of medicine, dentistry, psychiatry, psychology, nursing, physical therapy, gerontology, chiropractic, podiatry, midwifery, optometry, pharmacy, and any other practice in which individuals are treated for medical or psychological problems or conditions, as well as the rendition of any service supportive of or ancillary to those practices.

- (c) Verification that the applicant has been engaged in the practice of nursing home administration, or has taught in a health care administration program, or has served as a member of a nursing home survey or accreditation team for three of the five years immediately preceding the date of application.
- (d) A report of any malpractice actions which are currently pending and any adverse malpractice action which has ever been taken against the applicant, and the final disposition of such actions if any.

12-39-111. Nursing home administrator - temporary permit. (1) Every applicant for a nursing home administrator license who has otherwise qualified under the provisions of section 12-39-106 shall be granted admission to the administrator-in-training program in accordance with the rules of the board. At the expiration of the one-year in-training period, said applicant shall be eligible to take the examination.

- (2) The nursing home administrator-in-training shall submit quarterly reports on forms provided therefor by the board.
- (3)(a) This section shall not apply to the following:
 - (I) Those individuals who have obtained a bachelor's degree in business administration, public health administration, or health administration;
 - (II) Those individuals who have obtained an associate degree in a health care-related field and who have also obtained a minimum of two years' experience in supervision or administration in a nursing home or hospital. For the purpose of this section, a registered nurse who is a graduate of a three-year diploma program shall be considered to have met the associate degree requirement.
- (b) The exemptions named in paragraph (a) of this subsection (3) shall not include an associate or a bachelor's degree in gerontology unless a minimum of one-half of the course work leading to such degree is in a health care-related field.
- (4) Every nursing home administrator-in-training shall register the fact of such training with the board in accordance with the rules and on forms provided therefor by the board.

- (5) The board may waive up to six months of the one-year period required by subsection (1) of this section if it finds that the applicant has prior experience or training sufficient to satisfy requirements established by rule or regulation of the board.
- (6) The board may issue a temporary permit to a non-licensed applicant for a period not to exceed six months in an emergency situation. The board may promulgate rules and regulations for the issuance of such a temporary permit.
- (7) A temporary permit shall be granted to an applicant who is employed as the hospital administrator by a general hospital licensed or certified by the Colorado department of health. Such temporary permit shall be granted for a period not to exceed twelve months and shall be void at such time the permit holder is no longer employed by the general hospital. This temporary permit shall exempt the holder from the requirements of on-site supervision while meeting the administrator-in-training obligation. This subsection (7) shall not preclude the holder of the temporary permit from qualifying for the provisions of subsection (5) of this section.

12-39-112. Disciplinary proceedings - immunity in professional review. (1) The license or registration of any person practicing or offering to practice nursing home administration may be revoked or suspended or such licensee may be reprimanded, censured, or otherwise disciplined in accordance with the provisions of this section upon decision and after due hearing in any of the following cases:

- (a) Upon proof that such licensee is unfit or incompetent by reason of negligence, habits, or other causes;
- (b) Upon proof that such licensee has violated any of the provisions of this article or the rules enacted pursuant thereto or acted in a manner inconsistent with the health and safety of the patients of the home in which he is the administrator;
- (c) Upon proof that such licensee is guilty of fraud or deceit in the practice of nursing home administration or related activities or in his admission to such practice;
- (d) Upon proof that such licensee has been convicted of violating any provision of section 26-1-127 or section 26-4-504 (8), C.R.S.

- (2) The board or an administrative law judge designated by it has jurisdiction to hear all charges brought under the provisions of this section against persons licensed and registered as nursing home administrators and upon such hearings shall determine the charges upon their merits. If the board determines that such person is guilty of the charges, the board may revoke his license and registration, suspend him from practice, or reprimand, censure, or otherwise discipline such licensee.
- (3) Proceedings under this section shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S.
- (4)(a) If a professional review committee is established pursuant to this section to investigate the quality of care being given by a person licensed pursuant to this article, it shall include in its membership at least three persons licensed under this article, but such committee may be authorized to act only by:
 - (I) The board; or
 - (II) A society or an association of persons licensed pursuant to this article whose membership includes not less than one-third of the persons licensed pursuant to this article residing in this state if the licensee whose services are the subject of review is a member of such society or association.
- (b) Any member of the board or a professional review committee authorized by the board and any witness appearing before the board or such professional review committee shall be immune from suit in any civil action brought by a licensee who is the subject of a professional review proceeding if such member or witness acts in good faith within the scope of the function of the board or such committee, has made a reasonable effort to obtain the facts of the matter as to which he acts, and acts in the reasonable belief that the action taken by him is warranted by the facts. The immunity provided by this paragraph (b) shall extend to the members of an authorized professional review committee of a society or an association of persons licensed pursuant to this article and witnesses appearing before such committee if such committee is authorized to act pursuant to subparagraph (II) of paragraph (a) of this subsection (4).

12-39-113. Penalties. (1) It is a class 3 misdemeanor for any person to:

- (a) Sell or fraudulently obtain or attempt to obtain or furnish any license or aid or abet therein; or
- (b) Practice as a nursing home administrator under cover of any license or registration illegally or fraudulently obtained or unlawfully issued; or
- (c) Practice as a nursing home administrator or use in connection with his name any designation tending to imply that he is a nursing home administrator unless duly licensed and registered to so practice under the provisions of this article; or
- (d) Practice as a nursing home administrator during the time his license or registration issued under the provisions of this article is suspended or revoked or has otherwise expired.

(2) Such person shall be punished as provided in section 18-1-106, C.R.S.

12-39-114. Injunctive proceedings. If the local district attorney refuses to act within a reasonable time after the board makes a request for enforcement of this article, the board may apply, in the name of the people of the state of Colorado through the attorney general, for an injunction in any court of competent jurisdiction to enjoin any person from committing any act declared to be a misdemeanor by this article. If it is established that the defendant has been or is committing an act declared to be a misdemeanor by this article, the court or any judge thereof shall enter a decree perpetually enjoining said defendant from further committing such act. In case of violation of any injunction issued pursuant to this section, the court or any judge thereof may summarily try and punish the offender for contempt of court. Such injunctive proceedings shall be in addition to and not in lieu of all penalties and other remedies provided in this article.

12-39-115. Restoration of licenses or registrations. (1) The board, in its discretion, may reissue a license or registration to any person whose license or registration has been revoked.

(2) Application for the reissuance of a license or registration shall be made in such manner as the board may direct in accordance with its rules.

12-39-116. Disposition of fees. All fees prescribed in this article shall be collected by the board and transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for expenditures of the board incurred in the performance of its duties and under this article, which expenditures shall be made out of such appropriations upon vouchers and warrants drawn pursuant to law.

12-39-117. Rule-making authority granted. All rule-making authority granted to the board under the provisions of this article is granted on the condition that the general assembly reserves the power to delete or rescind any rule of the board. All rules promulgated pursuant to this section shall be subject to sections 24-4-103 (8) (c) and (8) (d) and 24-34-104 (9) (b) (II), C.R.S.

12-39-118. Nursing home administrators of church or religious denomination - exempt. A person who serves as an administrator of a nursing home conducted exclusively for persons who rely upon treatment by spiritual means alone through prayer in accordance with the creed or tenets of a church or religious denomination shall be exempt from the provisions of this article.